STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
Petition for expedited approval of implementation of a market-based alternative tariff, to become effective on or before May 1, 2000, pursuant to Article IX and Section 16-112 of the Public Utilities Act	:	**00-0259**
	:	
Central Illinois Public Service Company **Union Electric Company**	:	**00-0395 (Cons.)**
	:	
Petition for approval of revisions to market value tariff, Rider MV	:	
	:	
Illinois Power Company	:	**00-0461**
	:	
Proposed new Rider MVI and revisions to Rider TC.	:	

ORDER ON REOPENING

DATED: April 11, 2001

TABLE OF CONTENTS

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:		
	:		
Petition for expedited approval of implementation of a market-based alternative tariff, to become effective on or before May 1, 2000, pursuant to Article IX and Section 16-112 of the Public Utilities Act	:	**00-0259**	
	:		
Central Illinois Public Service Company	:	**00-0395**	**(Cons.)**
Union Electric Company	:		
	:		
Petition for approval of revisions to market value tariff, Rider MV	:		
	:		
Illinois Power Company	:	**00-0461**	
	:		
Proposed new Rider MVI and revisions to Rider TC.	:		

ORDER ON REOPENING

By the Commission:

I. PROCEDURAL HISTORY; STATUTORY AUTHORITY; SUMMARIES OF MVI PROPOSALS AND PARTIES' POSITIONS

A. Procedural History; Statutory Authority; Background

In a petition filed on March 31, 2000, Commonwealth Edison Company ("Edison" or "ComEd") sought an order under Article IX and Section 16-112 of the Public Utilities Act ("Act") approving the implementation of tariffs, to be effective May 1, 2000, incorporating an alternative "market based" methodology which is intended to replace the "neutral fact finder" ("NFF") process currently in use. Edison requested that such an order be entered on or before April 27, 2000, with the tariffs filed pursuant to that order to be effective May 1, in part because May 1 is the first date of the June 2000 billing cycle under the tariffs to be implemented if its proposal is approved. The tariffs which Edison was proposing to make effective on May 1 were attached to the petition as Exhibit B.

Intervening petitions were filed by Abbot Industries, Inc., A. Finkl & Sons, Caterpillar Inc., Daimler Chrysler Corporation, Ford Motor Company, Modern Drop Forge Company, Monsanto Company, Motorola, Inc., Nabisco Brands, Inc., Northwestern Steel & Wire Company, R. R. Donnelly & Sons, Viskase Corporation, and Owens-Illinois, Inc., as the Illinois Industrial Energy Consumers ("IIEC"); Enron Energy Services, Inc. ("Enron"); Peoples Energy Services Corporation ("PE Services"), Nicor Energy, L.L.C. ("Nicor"); NewEnergy Midwest, LLC ("NewEnergy"); Midwest Independent Power Producers Coordination Group ("MWIPS"); Central Illinois Light Company ("CILCO"); Illinois Power Company ("IP" or "Illinois Power"); the Attorney General of the State of Illinois on behalf of the People of the State of Illinois ("AG"); Sieben Energy Associates ("Sieben"); CMS Marketing, Services and Trading ("CMS Marketing"); MidAmerican Energy Company ("MEC" or "MidAmerican"); Central Illinois Public Service Company ("CIPS"); Union Electric Company ("UE"); the People of Cook County; Unicom Energy, Inc. ("Unicom"), and the Citizens Utility Board. A written entry of appearance was filed by the City of Chicago. All petitions for leave to intervene were granted, subject to other rulings in the proceeding.

On April 5, 2000 a notice was served which gave potential parties an opportunity to file responses to the scheduling proposal contained in Edison's petition, and responses were filed by a number of parties. On April 12, 2000, the Commission in conference determined that a schedule should be implemented which would result in a proposed order being provided to the Commission by April 27, 2000 for its consideration and/or action prior to May 1, 2000 as requested by Edison.

On April 13, 2000, a prehearing conference was held at the Commission's offices at Springfield, Illinois, and a telephone hookup was made available at the Commission's offices in Chicago, Illinois. Appearances were entered by Edison; by the Commission Staff; by the City of Chicago; and by the filers of intervening petitions listed above except for CIPS, UE and Sieben. Thereafter, on April 13, 2000, a procedural schedule was put in effect.

On April 21, 2000, a Hearing Examiner's Proposed Order was served on the parties. Exceptions, and replies thereto, were filed by various parties. On April 27, 2000, the Commission entered an Interim Order in Docket 00-0259. That Interim Order authorized ComEd to implement its proposed market value index ("MVI") tariff, subject to certain modifications. ComEd filed tariffs reflecting these modifications, and such tariffs went into effect on May 1, 2000. The Interim Order also found that workshops should be initiated to consider further modifications and improvements to ComEd's MVI tariff prior to the summer 2001 period.

Applications for rehearing in Docket 00-0259 were filed by Enron, the AG, and IIEC, all of which were dismissed by the Commission as premature, without prejudice to being refiled after entry of a final order in the docket. Notice of appeals were filed by

IIEC, Enron, and the AG, to the Appellate Court of the Fourth Judicial District, from the Commission's decision to dismiss the above-cited applications for rehearing.

On June 1, 2000, CIPS and UE (jointly "Ameren") filed a petition for approval of an alternative market index methodology in Docket 00-0395. On June 5, 2000, IP filed proposed tariff sheets seeking approval of an alternative MVI methodology and of revisions to its Rider TC. The IP filing, which was assigned Docket No. 00-0461, was suspended and then resuspended. On July 6, 2000, the Commission, on its own motion, consolidated the three Market Index Dockets in 00-0259, 00-0395 and 00-0461.

Thereafter, a procedural schedule was put into effect. Workshops were held on two dates, and hearings were scheduled. At the hearings, direct, rebuttal and/or surrebuttal testimony was presented by a number of parties. Witnesses sponsoring testimony included the following: for ComEd: Paul R. Crumrine, David E. Nichols, Frank S. Huntowski, Arlene A. Juracek, and Steven T. Naumann; for Ameren: Keith P. Hock, Mark Eacret, and Craig D. Nelson; for IP: Leonard M. Jones, Mark J. Peters, Jacqueline K. Voiles, and Phillip G. Breezeel; for NewEnergy: Philip R. O'Connor, Thomas F. Bramschreiber, and Michael Kagan; for Nicor: Koby A. Bailey; for Unicom: David J. Braun; for CILCO: Deborah L. Lancaster and Heidi M. Munson; for Staff: Richard J. Zuraski, Roger Christ, and Thomas L. Griffin; and for IIEC: Linda E. Bowyer and Robert R. Stephens. At the conclusion of an October 13, 2000 hearing, the record was marked "Heard and Taken."

Initial briefs ("briefs") and reply briefs were filed by ComEd, IP, Ameren, Staff, IIEC, NewEnergy, CILCO, the AG and Unicom. Reply briefs were also filed by Nicor and PE Services.

The hearing examiner's proposed order was served on the parties. Briefs on exceptions were filed by those parties who submitted initial briefs, plus PE Services. Reply briefs on exceptions were filed by those parties who filed exceptions to the proposed order, except for CILCO and PE Services.

Requests to reopen the record for further hearings on certain issues were filed by NewEnergy and IIEC, and the proceeding was reopened for that purpose by the Commission. A status hearing on reopening was held on January 25, 2001 at which time the parties agreed to a schedule on reopening. On reopening, ComEd offered the testimony of Lawrence F. Leonard and David E. Nichols; Ameren offered the testimony of Mark Eacret; IP offered the testimony of Philip Breezeel; Staff offered the testimony of Richard Zuraski; New Energy offered the testimony of Philip R. O'Connor, Tom Bramschreiber and Daniel Somers; and the IIEC offered the testimony of Linda E. Bowyer.

A hearing was held on February 27, 2001, and the record was marked "Heard and Taken" on reopening. Briefs on reopening were filed on March 6, 2001 by ComEd, IP, Ameren, Staff, IIEC, NewEnergy and the AG.

The hearing examiner's proposed order on reopening was served on the parties. Briefs on exception were filed by ComEd, IP, Ameren, Staff, IIEC, NewEnergy and the AG. Reply briefs on exception were filed by those parties who filed exceptions, except for the AG.

Section 16-112; Background

In these consolidated proceedings, ComEd, IP and Ameren seek authority to implement "market value" tariffs. These market value index tariffs would govern the methodology used by these companies for computing market values, and the resulting computations would replace the default determinations of market values produced each year by a Neutral Fact Finder ("NFF"), under Article IX and Section 16-112 of the Public Utilities Act ("Act"). Section 16-112 (a) provides, in part:

> The market value to be used in the calculation of transition charges as defined in Section 16-102 shall be determined in accordance with either (i) a tariff that has been filed by the electric utility with the Commission pursuant to Article IX of this Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, or (ii) in the event no such tariff has been placed into effect for the electric utility, or in the event such tariff does not establish market values for each of the years specified in the neutral fact-finder process described in subsections (b) through (h) of this Section, a tariff incorporating the market values resulting from the neutral fact-finder process set forth in subsections (b) through (h) of this Section.

Thus, the Commission may approve a market value index tariff, but, in the absence of such a tariff, the NFF process is the default mechanism to be utilized in the derivation of the market values which are used in the calculation of transition charges.

With respect to the Commission's authority to approve, modify or reject such alternative methods for computing market values, Section 16-112(m) provides, in part:

> The Commission may approve or reject, or propose modifications to, any tariff providing for the determination of market value that has been proposed by an electric utility pursuant to subsection (a) of this Section, but shall not have the power to otherwise order the electric utility to implement a modified tariff or to place into effect any tariff for the determination of market value other than one incorporating the neutral fact-finder procedure set forth in this Section. Provided, however, that if each electric utility serving at least 300,000 customers has placed into

> effect a tariff that provides for a determination of market value as a function of an exchange traded or other market traded index, options or futures contract or contracts, then the Commission can require any other electric utilities to file such a tariff, and can terminate the neutral fact-finder procedure for the periods covered by such tariffs.

Hence, the Commission has the authority to *propose* modifications to a utility's market value index methodology, but utilities may reject the Commission's modifications and rely instead on the NFF market values for purposes of computing transition charges.

By way of further background and context, as explained by Staff, Article XVI of the Act was enacted as part of the Electric Service Customer Choice and Rate Relief Law of 1997, which became effective in December of 1997. That article required each electric utility in the State to file tariff sheets with the Commission that would enable retail customers located in an electric utility's service area to receive electric power and energy from suppliers other than the electric utility. Rather than purchase traditional utility services from the utility as a single "bundled" package, customers would be able to purchase "delivery services" from the utility on an unbundled basis and purchase the power output of generators from other third-parties, such as other utilities, power marketers or generating companies. (Staff brief at 5-6)

These third-party entities, who are eligible to market power at retail in Illinois, have come to be known collectively as "retail electric suppliers" ("RESs"). This term includes, but is not limited to, Alternative Retail Electric Suppliers ("ARES") as that latter term is defined in the Act. Staff states that through the restructuring described above, delivery services remain subject to regulation, while the business of supplying power at retail is potentially open to competition, as utilities and RESs compete for the business of consumers, subject to the requirements associated with the transition period.

During the transition period, Staff explains, utilities that have embedded costs of generation that are higher than what the market will bear are afforded opportunities to recover what might otherwise have been "stranded" costs through a non-bypassable "customer transition charge" ("CTC"). The CTC, which is more precisely defined in Section 16-102 of the Act, was described by Staff witness Zuraski using the following formula:

$$CTC = BR - DSR - MV - mf \text{,} \quad \text{where}$$

BR is the customer's or customer class' average bundled rate;

DSR is the customer's or customer class' average delivery services rate;

MV is the market value (as adjusted for the load characteristics for the customer or customer class); and

mf is a "mitigation factor" applicable to the customer or customer class.

Hence, MV is one of the components in the basic formula for computing the CTC. The CTC, if positive, is then applied to the electricity usage of customers that switch from bundled service to delivery service, whether the customer receives power and energy from a RES or on an unbundled basis from the utility through the so-called Power Purchase Option ("PPO").

Staff says the PPO is, in essence, a bundled service that a utility is required by the Act to offer to non-residential customers if the utility chooses to impose a CTC. However, while the utility, under the PPO, continues to provide traditional utility services as a single bundled package, the utility's PPO charges are unbundled into (a) a PPO administrative fee component, (b) a delivery services component, (c) a CTC component, and (d) a power and energy component. The charge(s) for the power and energy component are to be based on the same market values used in the computation of the CTC. Therefore, Staff states, there is a tendency for the MVs that PPO customers see as a positive charge to be offset by the MVs that PPO customers (and other delivery services customers) receive back as a credit in the CTC calculation. Similarly, the delivery services customer who takes service from a RES pays a delivery services component, a CTC component, and a power and energy component that could be greater or less than the power and energy component (MV) reflected in the CTC.

Staff describes the primary significance of MV to the transition to competition as follows: “While an overestimated MV can undermine the utility's opportunity to recover sunk costs incurred during the era of traditional regulation, an underestimated MV can undermine the development of a competitive retail market for power and energy during the transition period." Staff adds, "Underestimating the MV that is used in the CTC will raise transition charges and reduce the extent to which RESs can create savings opportunities for potential delivery services customers.“ (Staff brief at 8)

B. Description of Utilities’ MVI Proposals

A description of the design and mechanics of the ComEd, IP and Ameren MVI proposals is contained immediately below. A summary of parties’ positions is set forth later in Section I. A more extensive discussion of the substantive issues is contained in Sections II, III and IV of this order. For the most part, the conclusions reached in the order are in Section V.

It is also noted that the descriptions of the utilities’ MVI proposals contained in this section of the order is intended to summarize those proposals as they were presented as of the time of the hearing examiner’s proposed order issued on December

22, 2000 prior to reopening. Any updating of the MVI proposals on reopening is discussed in subsequent sections of this order.

1. ComEd

For peak period prices, ComEd proposed that market values be determined using forward transaction prices along with bid/ask prices on Altrade and Bloomberg PowerMatch, two real-time, online electronic trading exchanges which post "Into ComEd" forward market prices. On November 22, 2000, ComEd informed the parties that the Into ComEd screen was removed from the Bloomberg exchange on November 21, 2000. ComEd's methodology uses daily transaction prices or bid/ask midpoints recorded for each given forward delivery period. In instances where there are few completed transactions, bid/offer midpoints are used to provide additional data points. These daily values are averaged over a period of 20 consecutive business days ending March 22 and June 22 to arrive at estimated on-peak market prices for each of two pricing periods identified below.

ComEd has suggested a "data hierarchy" (which it modified to address Staff's concerns) for establishing the best "snapshot" value for transactions and bid/offer midpoints. The basic principles of this hierarchy are: (1) individual monthly values for either transactions or bid/offer midpoints will be used when available; (2) individual monthly values will be back-calculated from summary month information when possible; and (3) when no individual monthly data are available, the summary month information will be used for all those individual months covered by the summary contract. After establishing the array of daily values for each contract month, the utilized daily value will be selected with preference given first to weighted trades, then to last trades, and finally to bid/offer midpoints.

For off-peak pricing, the ComEd MVI proposal uses historical day-ahead spot prices from "Power Markets Week's Daily Price Report" for the most representative region for ComEd's service territory, which is currently Into ComEd. These quotes provide a monthly set of values of historical prices based on day-ahead quotes. Quotes are based on surveys taken for transactions on weekdays. The simple average of these daily price quotes is used to establish a monthly average price. Hourly prices are developed for each monthly on-peak and off-peak period as described below.

For hourly price shaping, ComEd proposed that Locational Marginal Price data from the PJM-West Interconnection ("PJM-West") be used to develop hourly price shapes for each monthly peak and off-peak period. By using hourly price data for the 8760 hours in a year, one can translate average block prices into hour-by-hour market values.

For each month, two scalars are determined. The first monthly scalar, the "Peak Scalar," is the ratio of the on-peak market price for that month and the simple average of the hourly PJM-West prices in the same month for the hours from 6:00 a.m. to 10:00

p.m. from Monday through Friday, exclusive of North American Electric Reliability Council ("NERC") holidays. The second monthly scalar, the "Off-Peak Scalar," is the ratio of the off-peak market price for that month and the simple average of the hourly PJM-West prices in that same month for the hours from 12:00 a.m. to 6:00 a.m. and from 10:00 p.m. to 12:00 a.m. from Monday through Friday, exclusive of NERC holidays.

For each month, each of the 8760 hourly PJM-West prices are multiplied by either a peak or an off-peak scalar. Hourly prices for each month for the hours from 6:00 a.m. to 10:00 p.m. from Monday through Friday, exclusive of NERC holidays, are then multiplied by the respective Peak Scalar for that month. All other hours in each month are multiplied by the respective Off-Peak Scalar for that month. At this point, the 12 values for the Peak Index and the Off-Peak Index are expanded and shaped into 8760 hourly prices based on the hourly shape of prices from the PJM-West price data. These resulting hourly prices intended to represent the system market values which correspond with typical system loads from the same periods.

The 8760 hourly values are increased to account for system energy losses on the transmission system as specified in ComEd's Open Access Transmission Tariff ("OATT"). Each hourly value is also increased by one of the two monthly distribution loss factors applicable to that customer class. The appropriate distribution loss factor is determined as either the peak period loss factor or the off-peak period loss factor, based on the definition of peak and off-peak periods as contained in ComEd's retail tariffs.

Next, the hourly price values are load-weighted by multiplying each hourly value times the corresponding class hourly load from the corresponding year. The hourly results of this multiplication are summed for each of four time periods (summer peak and off-peak, non-summer peak and off-peak) and divided by the sum of class hourly loads for the corresponding hours to determine the seasonal time of use Market Value Energy Charges ("MVECs") for that customer class. The summer period in the calculation encompasses the months of June through September, while the nonsummer period contains the eight other months. ComEd defines the peak period as 9:00 a.m. through 10:00 p.m., Monday through Friday excluding certain holidays, and the off-peak period is defined as all other hours. Seasonal non-time of use MVECs are determined for each of the two seasons for each customer class by performing the operation using all hours in each season. Similarly, a single Load Weighted Average Market Value ("LWAMW") is determined for each customer class by making the calculation using all of the hours in the year.

With regard to time periods for calculating market value, there are two separate periods in each year, designated "Applicable Period A" and "Applicable Period B." Applicable Period A covers a twelve month period starting with the June billing month and continuing through the following May billing month. Applicable Period B covers a nine month period starting with the September billing month and continuing through the following May billing month.

Beginning with the initial effective date of Rider PPO-MI, customers that commence delivery services in the billing months of May, June, or July (i.e., first bills in the June, July, or August billing months) pay CTCs determined for Applicable Period A. Such customers will be subject to CTCs determined for each subsequent Applicable Period A as long as the customers continue to receive delivery service under the ComEd proposal.

Beginning with the initial effective date of Rider PPO-MI, customers that commence to take delivery services in the billing months of August through April (i.e., first bills in the September through May billing months) pay CTCs determined for Applicable Period B. At the end of that period, such customers will then be subject to CTCs determined for each subsequent Applicable Period A as long as the customers continue to receive delivery service. The updated MVECs, LWAMVs, and CTCs will be filed with the Commission for informational purposes on the first business day on or after April 1 for Applicable Periods A and the first business day on or after July 1 for Applicable Periods B.

2. Ameren

According to Ameren, it is proposing that market values be determined for on-peak and off-peak periods based on data from electronic exchanges or published data that are accessible to market participants, in a manner substantially similar to that recently approved by the Commission for use by ComEd in the year 2000. Specifically, on-peak market prices would be determined using forward contract market data for electric energy delivered in the Into Cinergy hub from Altrade and Bloomberg PowerMatch. Ameren proposes to use these forward contracts' market data to determine the on-peak market prices because the on-peak period is the most volatile pricing period. In this regard, Ameren says its proposal is the same as ComEd's except that Ameren proposes to use the Into Cinergy hub while ComEd proposes to use the Into ComEd hub.

Similar to ComEd's tariff, Ameren's proposal provides that the prices filed with the Commission in April and July will be based on data calculation periods consisting of 20 consecutive business days immediately proceeding March 22 and June 22, respectively.

During each of these calculation periods, daily weighted average prices, last trade prices, or, when necessary, market indicative values (determined by the midpoints of bid and offer prices), would be recorded for each given forward delivery period. There will be a morning and afternoon data capture each day of the 20-consecutive business day calculation period. These data captures will provide market data that is currently available for each contract period (i.e., Jun 00, Jul-Aug 00, to May

01). When listed contract periods are greater than one month, the same values would be used for all months covered by the contract (e.g. Jul-Aug 00 values will be used for both July and August).

Ameren states that the chosen hierarchy for Altrade is: (1) the afternoon weighted average price of that day's trades, (2) morning weighted average price of that day's trades, (3) afternoon last trade price, (4) morning last trade price, and (5) the simple average of midpoints from available paired bids and offers from the morning and afternoon data captures. For Bloomberg PowerMatch, the daily hierarchy is: (1) afternoon last trade price, (2) morning last trade price, and (3) the simple average of midpoints from available paired bids and offers from the morning and afternoon data captures. A simple average of these daily "snapshots" for both exchanges over the 20 consecutive business day period ending March 22 or June 22 would determine the monthly on-peak market prices for the applicable period. Each such monthly on-peak market price would then be used to scale hourly price shapes from the corresponding month, to create hourly prices relevant to Illinois.

Ameren says the determination of market values for off-peak periods under Ameren's proposal will be handled in the same manner as ComEd proposes. Historical prices for the daily eight-hour off-peak periods from Monday through Friday for various reliability regions can be obtained from "Power Markets Week's Daily Price Report" published by McGraw-Hill. In this report, a range of daily spot market transactions is listed. Ameren will calculate the midpoint between the minimum and maximum trades for each day with reported prices, and a simple average of the midpoints for those days will be used as the monthly value for the off-peak market price. There is no applicable off-peak, regularly traded, forward market data, but there is not, Ameren asserts, a significant level of volatility in off-peak prices.

The actual prices that would be used by Ameren in calculating an off-peak market price are the mid-point (average) of the reported range of trades. However, these prices only cover the weekday off-peak period and do not cover the entire Saturday and Sunday periods. In Ameren's view, since PJM-West provides a reasonable proxy for Illinois' generation mix, the off-peak price shapes from PJM-West would represent the off-peak price shapes for Illinois. These price shapes contain the hourly fluctuations over the weekend, but need index prices to scale it for Illinois. The weekday off-peak prices from PJM-West will be matched with the off-peak prices from Southern MAIN to calculate this off-peak scalar. The hourly price changes from PJM-West will maintain the higher weekend prices, but scaled for Southern MAIN off-peak price levels.

Ameren also propose that actual Locational Marginal Price data from the PJM-West for the most recent full calendar year be used to develop hourly prices for each monthly on-peak and off-peak period. Ameren, like ComEd, will perform this load shaping adjustment for all 8760 hours in the year.

Under the Ameren proposal, market values will be adjusted upward for transmission and distribution line losses. In addition, Ameren uses a methodology substantively the same as ComEd to convert the hourly price data into seasonal time of use, non-time of use, and a single load weighted average market value.

Under Ameren's proposal, like ComEd's, market values would be determined twice a year, in March and June, for Applicable Period A and Applicable Period B, respectively. The newly established values would be reflected in new PPO prices and CTCs for June-May and September-May periods going forward, as applicable.

Ameren proposes that customers taking delivery services in the months of June, July or August (first bills in July, August or September) would pay CTCs determined for Applicable Period A. Such customers would be subject to CTCs determined for each Applicable Period A as long as the customers continue to receive delivery services. Customers that switch from bundled service to delivery services in the months of September through May (first bills in October through June) would pay CTCs determined for Applicable Period B. At the end of that period, such customers would then be subject to CTCs determined for each subsequent Applicable Period A as long as the customers continue to receive delivery services.

Ameren proposes to make a basis adjustment to the on-peak market values derived from the Into Cinergy hub. This adjustment reflects the different regional market in which Ameren and Cinergy sell, and their customers buy, electric power and energy. ComEd, which proposes to use the Into ComEd hub for developing on-peak market values, has not included a basis adjustment in its proposal.

3. Illinois Power

IP also proposes to replace the NFF values with market-based values. IP plans to use data from the Altrade and Bloomberg PowerMatch in the determination of monthly on-peak market prices. However, IP plans to supplement that data with a published survey of data from Power Markets Week. Like Ameren, IP proposes that on-peak market values will be based on Into Cinergy hub forward prices. Market values will be developed by obtaining daily values for forward market data via a specified hierarchy on an as available basis. IP says that such on-peak market values will be adjusted by an appropriate basis adjustment to reflect the regional market in which IP sells, and its customers buy, electric power and energy.

IP says that its proposal uses actual trades (as opposed to bid-offer averages) whenever an actual trade is available for the contract month at issue. Where multiple trades occur for the month at issue, they are averaged (and where possible, weighted averaged by volume). When only one trade is reported, then it will be used. If no trades are reported throughout the entire snapshot period, bid-offer averages will be used.

IP says that its proposed hierarchy focuses on actual trades because an actual trade clearly demonstrates a level at which agreement was reached on value, whereas the bid/offer represents a range in which one would expect to see eventual agreement. IP contends that with actual trades displacing bid-offer averages, it will be harder for someone to attempt to manipulate the market price.

Historical prices for the daily eight-hour off-peak period from Monday through Friday for Lower MAIN can be obtained from McGraw Hill DRI or Platt's. IP will use the published daily weighted average from this report. In the absence of such data, the Company will calculate the midpoint between the minimum and maximum trades for each day with reported prices for the respective month, and a simple average of the midpoints for those days will be used for the off-peak market price.

The weekend period value is the product of the weekday off-peak period and an appropriate seasonal correlation factor. The seasonal correlation factor is the simple average of all PJM West Hub prices, by season, for the 12:00 a.m. Saturday through 12:00 midnight Sunday time period, divided by the simple average of all PJM West Hub prices, by season, for the periods 12:00 a.m. to 6:00 a.m. and 10:00 p.m. to 12:00 a.m. Monday through Friday. The summer season is June through September. All other months are non-summer. For each month, the weekday prices are multiplied by the number of weekday off-peak hours and added to the product of the weekend prices multiplied by the number of weekend off-peak hours. The sum of these products is then divided by the total number of off-peak hours in the given month to arrive at the unit price.

Unlike ComEd and Ameren, which propose to perform load shaping using 8760 hours of load data from PJM-West, IP says its load shaping adjustment is limited to the on-peak hours consistent with the Commission's decision in IP's delivery services proceeding, Docket Nos. 99-0120 add 99-0134.

IP will recalculate market values on a monthly basis to reflect up-to-date forward looking prices and reduce the risk of price volatility. This is different than the proposals of ComEd and Ameren to calculate market values twice each year using the Applicable Period A/B method. Under IP's approach, the on-peak market data for the last five consecutive business days of the second prior month and the first five consecutive business days of the prior month will be used to determine the market values for each one-year period that commences the following month. On or before the 8th business day of each month, IP will file Information Sheets with the Commission and post on its web site the market values for energy for the on-peak and off-peak periods for each relevant calendar month beginning with the next calendar month following such 8th business day.

IP says that using the 8th business day represents a change from the Company's June 5, 2000 filing, where the 15th day was proposed. The change to the 8th business day was made in response to various parties who have commented on the June 5 proposal and have recommended that customers be given a longer window of time to evaluate their options in light of an updated market value, and resulting transition charge. IP says that moving the date from the 15^{th} to the 8^{th} business day provides the customer with additional time to evaluate its choices and still provides IP enough time to perform the necessary calculations.

Once a customer commences delivery service, its CTC remains in effect for the next 12 billing periods, or Annual Period. The new monthly market values and CTCs would apply to prospective delivery service customers, or to existing delivery service customers who reach the anniversary date of their Annual Period.

Under IP's proposal, the market value for on-peak non-firm energy for each month is equal to the market value for on-peak firm energy for each month divided by 1.15. The factor of 1.15 is related to the minimum planning reserve margin that utilities are directed to have available by NERC.

Like Ameren's basis adjustment, on-peak market values will be adjusted by an appropriate basis adjustment to reflect the regional market in which Illinois Power sells, and its customers buy, electric power and energy. Off-peak market values utilize the most recent calendar year's off-peak prices for Lower MAIN from reports that are published daily.

C. Overview of Parties' Positions

1. Introduction

As noted above, under Section 16-112 of the Act, the Commission may approve or reject an MVI proposal. In the absence of an MVI tariff, the NFF process is the default mechanism to be used to calculate market values. The Commission also has the authority to "propose" modifications to a utility's MVI methodology, but the utility may reject the Commission's proposed modifications and instead rely on the NFF market values. In this proceeding, ComEd, IP and Ameren seek approval of their respective MVI proposals. The design and mechanics of the ComEd, IP and Ameren MVI proposals are described above, and will not be repeated in this section of the order.

Some parties, including Staff, Ameren, ComEd, and IP, believe the record indicates the likelihood that the MVI tariffs proposed by Ameren, ComEd, and IP will increase, relative to the NFF, the MVs used in the computation of CTCs. Since an increase in MVs causes a decrease in CTCs, these parties contend that the proposed indices can be viewed as a net improvement over the NFF-based default mechanism from the perspective of customers that want to seek out unbundled alternatives to traditional utility service.

In the instant case, while most parties say they favor a properly designed MVI method over the NFF, a number of parties, including Staff, NewEnergy and CILCO, have proposed modifications to the utilities' MVI proposals, as discussed below. One utility, IP, says it will not accept several of the proposed revisions to its MVI tariff. Some of the parties proposing modifications to the utilities' MVI tariffs, such as NewEnergy, assert that unless flaws in the utilities' MVI proposals are remedied by means of such modifications, the proposals should be rejected, even if that means returning to the NFF.

One party, the IIEC, believes the utilities' MVI proposals contain serious legal and other deficiencies which are beyond correction in these dockets, and should be rejected in favor of the NFF. In the alternative, IIEC recommends various modifications.

In addition, a number of parties, such as NewEnergy, IIEC and Nicor, recommend that any MVI proposals approved by the Commission be subject to a one year sunset provision.

It is also noted that for the most part, the overview of positions contained in this section of the order is intended to summarize the parties' positions as they were presented as of the time of the hearing examiner's proposed order issued on December 22, 2000 prior to reopening. Any updating of these positions on reopening is discussed in subsequent sections of this order.

2. Utilities Proposing MVI Tariffs: ComEd, IP and Ameren

According to **ComEd**, the record shows that since the entry of the Interim Order, ComEd's methodology has proven to be a vast improvement over the NFF methodology it replaced. (ComEd brief at 4) First, ComEd asserts, there is little or no dispute in this record that ComEd's methodology produces more accurate results than the NFF process and thereby sends better price signals to market participants. For instance, ComEd submits, while the NFF process used contracts and transactions that were geographically unrelated to the market in which ComEd sells and its customers purchase power and energy, ComEd's proposal uses measures that more directly correspond to that market. (Id.) ComEd says these data also more closely relate to the time period being measured, and that in contrast, the NFF process uses stale data and data from multiyear contracts in which the pricing terms can be front-end or back-end loaded and thus may not reflect the actual market price at any given time. (Id. at 5; ComEd reply brief on exceptions at 14-15)

Second, ComEd claims its methodology is much more "transparent" and accessible to customers and other market participants than the NFF "black box" methodology. ComEd says the price data utilized in its proposal is accessible to numerous buyers and sellers of power and energy, and that the calculations required to estimate market values are relatively straightforward. Conversely, ComEd asserts, the

NFF process involves substantive judgments regarding contracts to be included and the treatment of these contracts, which reduces the ability of participants to predict market values and make intelligent decisions. ComEd's witnesses testified that under the NFF process, "(i) no one has access to the same data, (ii) the methodologies used by the NFF can change from year to year, (iii) exactly how the NFF's determinations are made is difficult to discern and (iv) the resulting values are even more difficult for market participants to predict in advance." (ComEd Ex. 8 at 6; ComEd reply brief on exceptions at 15-16)

Third, ComEd's believes its methodology decreases the opportunity of market participants to "game" the system in ways that benefit themselves but discourage efficient competition. ComEd says the NFF has consistently provided relatively "flat" market values throughout the year for summer peak, summer off-peak, non-summer peak and non-summer off-peak periods, and as a result, the NFF value has been too high in non-summer months, and too low in summer months. In ComEd's view, if market values do not reflect seasonality, RESs will have incentives to sign up new customers when PPO prices and CTC credits are higher than dictated by the market, *i.e.*, in the non-summer months, and assign customers back to the utility when the reverse is true, *i.e*., in the summer months. ComEd complains that this sort of constant switching is not true competition, and it unfairly harms the utility, which must act as the supplier of last resort. (ComEd brief at 6)

ComEd also argues that experience under the tariffs filed pursuant to the Interim Order has shown that ComEd's methodology has increased competition and resulted in additional savings for customers. According to ComEd, the number of customers switching to delivery services, and the percentage of those switching that elected service from a RES, increased following the implementation of ComEd's market based alternative (ComEd Ex. 8 at 7), and that in general, customers also experienced reduced transition charges over the summer period. (ComEd Ex. 3)

In its exceptions to the proposed order, ComEd contends that it is in a utility's best interest to obtain accurate values because a market value that is too high (and a transition charge that is too low) results in an economic loss for a utility. (ComEd brief on exceptions at 14, citing ComEd brief at 14-15 and reply brief at 20) Moreover, ComEd claims that the utility would be required to sell below cost if the market value is too low (and the PPO price is too low). ComEd also contends that the utility collects no more revenue under the PPO if the MVI is correct, high or low because of the direct offset of the MVI error in the CTC calculation. (Id.) ComEd further asserts that Section 16-112 of the Act requires the Commission to set market values which accurately reflect the cost of power and energy freed up by departing customers. In ComEd's view, the goal of the Commission should not be to artificially inflate market values. (ComEd brief on exceptions at 14)

ComEd notes that some parties have expressed concern about certain aspects of ComEd's methodology, including the current liquidity of the exchanges used in

ComEd's proposal and the suitability of day-ahead spot prices to estimate off-peak values. In addition, ComEd states, some parties have proposed various "adders" to the value of power and energy produced by ComEd's methodology for factors such as "load variability insurance" and energy imbalances. ComEd's position on these issues is discussed in other sections of this order. ComEd believes other parties' proposed modifications to its methodology are unsupported by the record and unwarranted as a matter of policy. ComEd says even those parties who have expressed these concerns do not appear to support a return to the NFF process or to recommend outright disapproval of ComEd's methodology, and that none of these parties has proposed an alternative market value methodology that will produce accurate results and enhance competition, as ComEd claims its methodology now has been shown to do in practice. ComEd contends that its methodology should now be approved, without further modification. (ComEd brief at 6-7)

ComEd also responds to certain legal arguments made by IIEC and New Energy. (ComEd reply brief at 6-15) ComEd says NewEnergy and IIEC argue that when establishing market value, the reference to "customers" in Section 16-112(a) means "retail" not "wholesale" customers. According to ComEd, Section 16-112(a) refers to "customers" not "retail customers", which encompasses other suppliers that purchase from the utility, not just the final users of the energy. (Id. at 8) ComEd also contends that "contrary to NewEnergy's and IIEC's arguments, the contracts used in the MVI methodology are clearly 'applicable to' the market in which retail customers buy." (Id. at 9)

In response to IIEC's argument that ComEd's MVI methodology does not comply with Section 16-112(a) because it fails to take into account "all relevant transactions" (ComEd reply brief at 9-10, citing IIEC brief at 24), ComEd claims Section 16-112(a) does not say that every transaction or type of transaction must be identified and evaluated, and to the contrary, permits the market value to be calculated "as a function of" a market traded index. (ComEd reply brief at 9-10) ComEd also asserts that IIEC's interpretation would effectively write the market value index provision out of the statute as no market index could possibly capture all possible transactions. (Id.)

In response to IIEC and NewEnergy, ComEd also contends that Section 16-112(a) does not preclude the use of bid/offer data. According to ComEd, bids and offers are a function of the prices being observed on the exchange, and that under Section 16-112(a), market value may be calculated "as a function of" a market traded index. (ComEd reply brief at 10)

In response to NewEnergy's arguments that ComEd failed to meet its burden of proof, ComEd asserts that it did meet its burden of proof, introducing substantial evidence in support of its MVI methodology. (ComEd reply brief at 12-13) ComEd claims the evidence it offered not only explained the proposal and contained supporting analyses, but also showed how the methodology has performed to date. Through this evidence, ComEd says it has demonstrated that the MVI methodology has performed better than the NFF process in producing accurate price signals. (Id.)

In response to NewEnergy's arguments that utilities' MVI proposals fail to reflect "the true cost of serving retail customers", as described below, ComEd contends that Section 16-112(a) refers to "customers", not "retail customers," which encompasses other suppliers that purchase from the utility, not just the final end users of the energy. (ComEd reply brief at 8-10) According to ComEd, the fundamental flaw with NewEnergy's arguments is that Section 16-112 of the Act requires the determination of the "market value" of the power and energy freed up by departing customers, not of the purported "true cost of serving retail customers" of a RES. According to ComEd, not only is a RES's cost of serving retail customers irrelevant under Section 16-112, but there is no evidence in the record on which the Commission could base a finding as to the "true cost of serving retail customers." (ComEd reply brief at 3, 8; reply brief on exceptions at 11-12)

In its exceptions to the proposed order, ComEd argues that market value is neither wholesale nor retail, but rather the value obtained in the market for power and energy. ComEd asserts that the Commission has not previously determined that either a "retail" or "wholesale" market value is required by the Act, but noted that the NFF has incorporated elements of both. (ComEd brief on exceptions at 3-4, citing Docket No. 00-0007, Order at 25 and Docket No. 99-0117, Order at 88; ComEd reply brief on exceptions at 11) According to ComEd, it is not clear that there are separate and distinct "retail" and "wholesale" values, although there are many different types of transactions, both retail and wholesale. (ComEd brief on exceptions at 3-4)

As noted above, and as explained more fully in the summary of parties' positions below, a number of parties have recommended that any MVI proposals approved by the Commission be subject to a one year sunset provision. ComEd's position is that a sunset provision is unnecessary in that the Commission or parties may propose changing the tariff in the event that a compelling change in circumstances were to occur. (ComEd brief on exceptions at 9) On this issue, the hearing examiner's proposed order recommended adoption of a sunset provision that would require the utilities to file new tariffs on January 1, 2003 and would further provide that the tariffs approved in this proceeding will cease to be effective at the conclusion of the customer's May, 2004 billing period. In its exceptions, ComEd states that while it continues to believe that a sunset provision is unnecessary, ComEd is willing to accept this provision if approved by the Commission. (Id. at 9; ComEd reply brief on exceptions at 1)

As discussed more fully below, NewEnergy, IIEC and PE Services object to the length of the sunset provision contained in the hearing examiner's proposed order and recommend that it be shortened. In its reply brief on exceptions, ComEd objects to these proposals to shorten the sunset period. ComEd argues that there is no reason to impose such a short sunset provision, nor any evidence that doing so would provide any benefit to consumers or the developing market. ComEd contends that such a short period would lead to uncertainty, which would harm customers and suppliers alike. ComEd states that while it believes that a sunset provision is unnecessary, it is willing to accept the sunset provision as it exists in the hearing examiner's proposed order. (ComEd reply brief on exceptions at 18)

The hearing examiner's proposed order on reopening recommended adoption of a sunset provision which would require the utilities to file new tariffs by October 1, 2002 and would provide that the tariffs approved in this proceeding will cease to be effective no later than the conclusion of the customer's May, 2004 billing period. In its brief on exceptions on reopening ("BOE on reopening"), ComEd indicated that it will accept that sunset provision. (ComEd BOE on reopening at 2) In its reply brief on exceptions on reopening ("RBOE on reopening"), ComEd again indicates that it is willing to accept the sunset provision as it exists in the hearing examiner's proposed order on reopening, but ComEd says it objects to all proposals to shorten this period. (ComEd RBOE on reopening at 9) In its RBOE on reopening, IP states that the problems with too short a period were well summarized in the hearing examiner's proposed order on reopening and that neither NewEnergy nor IIEC provides any new reasons for changing it. IP states that the hearing examiner's proposed order on reopening should not be altered on this issue. (IP RBOE on reopening at 3)

In addition to adopting a sunset provision, the hearing examiner's proposed order on reopening directed ComEd, IP and Ameren to collect trading volume data for the approved trading platforms on a monthly basis and provide that data to Staff on a monthly basis and to monitor the trading volumes on new or alternative trading platforms and provide any available data to Staff on a monthly basis. While none of the utilities objected to this proposal, all three recommended that the order be modified to allow the utilities to work with Staff to develop an efficient and effective monitoring mechanism. (ComEd BOE on reopening at 2-3; IP BOE on reopening at 3-5; Ameren BOE on reopening at 1-3) NewEnergy suggests that the trading volume data for new or alternative trading platforms be provided to the other parties to the instant proceeding, in addition to Staff. (NewEnergy BOE on reopening, Attachment A at 5) In its RBOE on reopening, ComEd indicates it will not agree to NewEnergy's proposal to provide this information to all parties. (ComEd RBOE on reopening at 10) In response to Ameren's brief on exceptions on reopening, IIEC recommends that the Commission include language in the final order which makes monitoring of such data a condition of the approval of the MVI tariffs, assuming such approaches are ultimately approved by the Commission. (IIEC RBOE on reopening at 1-2)

Illinois Power claims its MVI proposal (as amended by IP's witnesses during the course of these proceedings) is just and reasonable and should be adopted by this Commission without further changes. From the outset, Illinois Power asserts, it undertook a process of working with and listening to various parties. IP says the goal was to shape a final tariff that balanced the interests of many different parties and with which IP could be satisfied, and that IP has reached that point. (IP brief at 36)

In IP's view, its proposal is a significant improvement over the NFF process, and is a pro-consumer step in the right direction at a time when the electric market will be opening up to all non-residential customers. IP believes its proposal combines a market-basket of data sources for a liquid trading hub with a process that provides the appropriate price signals throughout the year. Although neither the Ameren nor the ComEd proposals contain all of the benefits of IP's proposal, IP asserts, it does not object to the Commission adopting either of them for those respective companies.

In comparing its proposal to the NFF, IP says that one major reason it filed a MVI proposal was because the NFF process, by its very nature, is flawed. IP contends that thus far, the NFF has used stale and possibly distorted data to produce a single market price state-wide that (with the exception of the 2001 NFF values) is derived from a very limited pool of contracts. IP alleges that, as designed by statute, the NFF process uses contracts that are months (and quite possibly years) old to determine the market price for the future.

IP also says that even though the statute permits the NFF to create market values that vary by utility, thus far, the NFF has chosen to set only state-wide values that are thereby inaccurate for all parts of the state. IP adds that the NFF sets prices on an annual basis, but the contracts he reviews may be multi-year contracts that are front-end or back-end loaded in terms of price. According to IP, when this occurs, the distorted contract pricing can effect the NFF's price. IP alleges that the NFF has historically had to rely on a very limited pool of data. IP claims that the entire 2000 NFF values were set using a total of 32 contracts. (Id. at 16)

IP contends that these alleged flaws in the NFF process have led to repeated years of inappropriate values being used for both transition charge calculations and PPO pricing. IP claims that the inappropriately low NFF values the last few years have been a direct hindrance to the development of competition in Illinois. According to IP, while the 2001 NFF values are higher than the 2000 values, they are even more problematic because they have not properly taken into account the very large seasonal variation in electricity prices in the Illinois market. (IP brief at 16-17)

IP argues that given the significant flaws inherent in the NFF process and the poor results produced by the flawed process, the status quo must be rejected, and that IP's MVI proposal should be approved.

In response to NewEnergy's arguments that utilities' MVI proposals fail to reflect "the true cost of serving retail customers," which is described below, IP says the statute speaks of "the market in which the utility sells, and the customers in its service area buy;" rather than "and its customers buy" as NewEnergy suggests. (IP reply brief at 9) According to IP, the customers at issue do not necessarily have to purchase from the utility, which is the whole point of choice. (Id.) Thus, IP argues, the customers envisioned in Section 16-112(a) may or may not be buying from the incumbent and may or may not be retail or wholesale. IP also contends that the NFF, which the MVI proposals would replace, is itself not limited to retail contracts in setting a market value. (IP reply brief at 9, citing Section 16-112(c)-(e)) Therefore, IP argues, since the NFF itself does not use contracts only applicable to retail customers or publish values solely applicable to retail load, the MVI should not be so limited either.

In response to arguments by the AG regarding Applicable Period A/B versus IP's 12-month method, as discussed below, IP says the AG's disagreement with IP's approach on the notice issue is not supported by the record. (IP reply brief at 22-23) Also, IP argues, the law is clear that IP cannot be required to offer PPO service to a customer who has a zero CTC as urged by IIEC. (IP brief at 4-5)

According to IP (IP brief at 4; IP reply brief at 5), while it remains open to even further suggestions to modify its MVI proposal, it is <u>not</u> willing to change the core of its proposal, and therefore is not willing to:

(1) Use an Into-ComEd hub and data sources;

(2) Change its load shaping adjustment methodology or adjust its off-peak values due to the type of data used in pricing that energy;

(3) Adjust its values for what have been termed "optionality," "planning reserve," "energy imbalance" or "capacity backed" adjustments; or

(4) Change the time periods during which data are collected and market values and CTCs are effective, including the monthly re-collection of data and the recalculation and publication of values for the subsequent 12-month period.

In its reply brief, IP says it is also <u>not</u> willing to agree to an interim tariff only. (IP reply brief at 5)

In its brief on exceptions, IP states that the proposed order has recommended certain modifications, which as currently written, are extremely problematic for IP. IP submits that each of the proposals contained in the proposed order can be modified in a manner that still meets the concerns expressed therein while forestalling a rejection of the entire package by IP. IP further states that no party should be surprised if the NFF remains in place due to the imposition of unwarranted modifications. (IP brief on exceptions at 3)

In its brief on exceptions, IP states that the modifications in the proposed order which it opposes are few in number but have the potential (as currently worded or as originally worded by their proponents) to cause far more problems than they solve, and are unsupported by the record in this case. In particular, IP claims that:

(1) the sunset provision, if retained at all, should be moved out slightly to coincide with the end of the mandatory transition period ("MTP"), which ends on January 1, 2005, and to permit initial implementation of any revisions well in advance of the summer season;

(2) the reserve adjustment, if retained at all, should not include any amount of double counting nor include an alternative that may adversely affect reliability; and

(3) the modification to IP's monthly updates should not create customer confusion or gaming opportunities and, yet, can be re-written to provide customer's with more decision time by using bi-monthly updates.

IP says that with its proposed modifications on these major issues, it would find the revised MVI acceptable. (IP brief on exceptions at 4)

As noted above, the hearing examiner's proposed order recommended adoption of a sunset provision that would require the utilities to file new tariffs on January 1, 2003 and would provide that the tariffs approved in this proceeding will cease to be effective at the conclusion of the customer's May, 2004 billing period. In its brief on exceptions, IP indicates that it opposes any extremely short sunset provision. In its proposed replacement language, IP recommends that the sunset provision be eliminated from the order, and that the order "strongly encourage" all parties to work together to determine if further revisions to the approved tariffs are necessary. (IP brief on exceptions at 5; replacement language at 2) In the alternative, if the sunset provision is not eliminated entirely, IP recommends that the dates in the proposed order, identified immediately above, be changed to July 1, 2003 and December 2004, respectively. (IP brief on exceptions at 6 and replacement language at 2)

As indicated above, NewEnergy, IIEC and PE Services recommend that the sunset provision in the hearing examiner's proposed order be shortened. In its reply brief on exceptions, IP recommends that their arguments be rejected. IP asserts that while no sunset provision is needed, if one is to be imposed, it should allow for orderly decision making following a reasonable period during which the parties can examine the various market value tariffs in action and work together toward any necessary modifications. IP claims that the proposals by other parties do not meet this criteria and should be rejected. (IP reply brief on exceptions at 4-5)

As discussed below, the AG recommends that the order include language that would provide for parties to present to the Commission, prior to January 1, 2003, adjustments or other modifications to the MVI tariffs that are generated by consensus in workshops or other forums. In its reply brief on exceptions, IP indicates that it assumed that it would be able to file new tariffs under such a scenario but, does not object to making this clear in the order. (IP reply brief on exceptions at 11-12)

The **Ameren** companies assert that they have offered a market index solution to the determination of market value which will provide a more accurate measure of the market value of power and energy bought and sold in the Ameren market than the NFF methodology provides. (Ameren brief at 2) Ameren says there is general agreement that a market index approach is preferable to the NFF, but there are a number of disputes as to how to calculate the market value of power and energy in the context of a market index alternative. Ameren notes that some parties have offered adjustments to the Ameren market value approach, arguing that without such adjustments, the Ameren index approach will understate the market value of power and energy at retail. Ameren says the Commission must bear in mind that the failure to reflect any one or more of those adjustments will not make the Ameren index approach less accurate than the NFF methodology. In Ameren's view, its MV index approach already produces a higher market value than the NFF approach. Ameren claims that even without the adjustments that have been proposed in this case, the Ameren index approach is far superior to the NFF model, and should be approved.

Ameren believes that use of a more accurate measure of market value will contribute to the development of meaningful competition in Illinois. (Ameren brief at 4) Ameren contends that a market-traded index approach will produce the most accurate result, and therefore, will produce the best conditions for fostering competition, with the fairest transition charge recovery. (Ameren brief at 4)

Ameren suggests the point of the proceeding is not to select a result-oriented mechanism that develops prices that are high or low, depending on a particular party's goal. What the Commission should do, Ameren contends, is select the mechanism that produces the most accurate measure of market value. In Ameren's view, the NFF is so seriously flawed that it cannot be reasonably said to be accurate, and even a flawed MVI proposal is superior to the NFF. (Ameren reply brief at 2)

As previously noted, the hearing examiner's proposed order recommended adoption of a sunset provision that would require the utilities to file new tariffs on January 1, 2003 and would provide that the tariffs approved in this proceeding will cease to be effective at the conclusion of the customer's May, 2004 billing period. In its brief on exceptions, Ameren indicates that it does not object to its market value tariff expiring at the conclusion of the May, 2004 billing period. Ameren also agrees that it is appropriate to require any new market value tariff to be effective after May, 2004 to be filed well in advance. However, Ameren asserts that the January 1, 2003 date does not allow sufficient time to reflect data from the full calendar year 2002 in the filing. Ameren contends that the earliest that such data could be included in a comprehensive filing would be March 1, 2003. (Ameren brief on exceptions at 1-2)

In its reply brief on exceptions, Ameren notes that IIEC, NewEnergy and PE Services recommend that the sunset provision in the hearing examiner's proposed order be shortened. Ameren states that this has been a lengthy and costly proceeding, and Ameren is not willing to start all over again later this year as PE Services recommends or as early as 2002 as IIEC and NewEnergy recommend. Ameren states that the sunset provision contained in the hearing examiner's proposed order, modified to reflect Ameren's brief on exceptions, reflects a reasonable compromise. Ameren indicates that it is not willing to accept a sunset provision with an earlier termination date. (Ameren reply brief on exceptions at 1-2)

3. NewEnergy

NewEnergy says the Commission should ensure that the market indices reflect the true cost of serving retail customers in Illinois. (NewEnergy reply brief at 4) According to NewEnergy, the record shows that each of the utilities' proposals fail to reflect the true cost of serving retail electric customers and therefore the value of the freed up power and energy. (Id. at 11)

In NewEnergy's view, by failing to reflect the true cost of serving retail customers in the determination of the market value, the utilities have failed to demonstrate that their proposed rates are just and reasonable. NewEnergy claims it is not sufficient to simply assert that the NFF process is flawed; rather, the utilities have an affirmative burden under Section 9-201(c) to demonstrate their proposals are just and reasonable. NewEnergy contends that the utilities' failure to satisfy this burden undermines the Commission's ability to approve the proposals as reasonable. (NewEnergy reply brief at 10-11)

Section 16-112(a) of the Customer Choice Act requires, in part, that the market value be determined under a market index methodology "as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells and the customers in its service area buy, electric power and energy". According to NewEnergy, in an effort to drive down the market value, ComEd and the other utilities are urging the Commission to adopt a strained interpretation of Section 16-112(a). NewEnergy says ComEd wants the Commission to read the term "market" to include both "retail and wholesale markets," since the two are not necessarily separate markets. NewEnergy contends ComEd's interpretation of Section 16-112(a) of the Act inappropriately relies on wholesale transactions, and is incorrect. (NewEnergy brief at 10; reply brief on exceptions at 7)

NewEnergy argues that a proper interpretation of Section 16-112(a) mandates a conclusion by the Commission that a proper market index methodology must incorporate adjustments to reflect the true cost of power and energy to serve retail customers.

NewEnergy says the straight-forward modifications to the three utility filings that NewEnergy has proposed in the instant proceeding are intended to help foster the development of competition by reflecting the true cost of serving retail customers. (NewEnergy brief at 44) Absent the ability to replicate bundled sales service, customers will, NewEnergy asserts, be left only with a choice between utility provided bundled service and utility provided PPO service. NewEnergy argues that such a result does not foster competition under any standard and is directly contrary to the General Assembly's stated intention. Rather than accepting the methodologies as they currently stand, the Commission, customers and the competitive market would be better served, NewEnergy asserts, if the Commission were to reject a flawed market index, and return to the NFF method, thereby maintaining some measure of influence over the process. In NewEnergy's opinion, the Commission should not adopt a flawed market index proposal just to rid itself of the NFF. (NewEnergy reply brief at 3-4)

In its reply brief on exceptions, NewEnergy claims that ComEd is alone in its interpretation of the relevant market for which the market value is to be calculated under the Act. (NewEnergy reply brief on exceptions at 7-9) NewEnergy argues that the word "market" in Section 16-112(a) of the Act is singular and that retail customers do not buy in the wholesale market. NewEnergy contends that ComEd's interpretation would render superfluous the phrase "and the customers in its service territory buy." NewEnergy claims that the term "customer" in Section 16-112 of the Act must relate to retail customers, not wholesale customers, since it identifies customers in the utility's "service area." (Id. at 8)

As discussed in other sections of this order, NewEnergy requests that the Commission enter an Order which adjusts the proposed methodologies to properly account for the value of serving an uncertain load by utilizing Black's Model or other methods; modifies the off-peak prices produced by the ComEd methodology in order to properly reflect the actual value of off-peak power and energy; removes the downward bias in ComEd's methodology due to the position of ComEd as virtually the sole poster of both bids and offers by changing the data hierarchies under its proposed methodology; revises the Ameren and IP proposals by making (a) the Staff multiplicative adjustment to account for locational basis; (b) the CILCO adjustment to account for planning resources, and (c) the CILCO adjustment to account for designation of specific generation resources. (NewEnergy brief at 44-46; NewEnergy reply brief at 41-42)

In NewEnergy's opinion, the Commission's order should also provide that the utilities' tariffs remain in effect for one year and that the Commission initiate either a workshop process or other proceeding to review and revise the market index tariffs to respond to new and better information. (NewEnergy reply brief at 42) As noted above, the hearing examiner's proposed order recommended adoption of a sunset provision that would require the utilities to file new tariffs on January 1, 2003 and would provide that the tariffs approved in this proceeding will cease to be effective at the conclusion of the customer's May, 2004 billing period. In its brief on exceptions, NewEnergy suggests that those dates be advanced to either November 1, 2001 and May 2002, respectively, or April 1, 2002 and May 2003, respectively. In either case, NewEnergy recommends that the Commission enter an order no later than February 1, 2002 to avoid any need to conduct the NFF process. NewEnergy argues that because there are deficiencies embedded in the utilities' MVI tariffs, there is good reason to provide a means to address these alleged deficiencies. (NewEnergy brief on exceptions at 5-7 and Attachment A at 4-6) Finally, NewEnergy suggests that Staff initiate workshops on the optionality issue within two months of the issuance of this order. (NewEnergy brief on exceptions, Attachment A at 14)

In its reply brief on exceptions, NewEnergy recommends that the Commission adopt the “one year” sunset provision that it says was advocated by NewEnergy, IIEC, Nicor and PE Services. NewEnergy states that if the Commission modifies the hearing examiner’s proposed order to include the other adjustments which NewEnergy recommends, it would be reasonable for the Commission to adopt a “two year” sunset provision, with tariffs expiring on May 1, 2003. (NewEnergy reply brief on exceptions at 6)

As discussed above, the hearing examiner’s proposed order on reopening recommended adoption of a sunset provision which would require the utilities to file new tariffs by October 1, 2002 and would provide that the tariffs approved in this proceeding will cease to be effective no later than the conclusion of the customer’s May, 2004 billing period. In its brief on exceptions on reopening, NewEnergy recommends that those dates be advanced to April 1, 2002 and May, 2003, respectively. (NewEnergy BOE on reopening at 3 and 22) NewEnergy’s proposed replacement language would advance the May, 2004 date to May, 2003. (NewEnergy BOE on reopening, Attachment A at 5; RBOE on reopening at 7)

In its brief on exceptions on reopening, NewEnergy also recommends that the order be modified so that the “recent developments and dramatic changes in the energy industry” serve, in part, as the basis for adopting a sunset provision. NewEnergy also suggests that the Commission direct the parties to immediately begin workshops to discuss and evaluate additional improvements, modifications, or revisions to the MVI tariffs. NewEnergy contends that if improvements, modifications, or refinements are developed during the workshop process, the utilities should immediately submit such changes to the Commission for approval. (NewEnergy BOE on reopening, Attachment A at 5-6; RBOE on reopening at 5)

In response to IP’s assertions that it is unwilling to accept certain modifications to IP’s proposal, NewEnergy states that IP has only one customer taking services from a RES. NewEnergy says IP’s threats that it will not accept adjustments are consistent with the manner in which IP has frustrated customer choice in its service territory. (NewEnergy reply brief at 5-6) NewEnergy argues that the Commission “should make the necessary modifications to utility proposals regardless of their threats that to do so could result in a return to the NFF process.” (NewEnergy reply brief at 13)

4. IIEC

IIEC argues that when the legal and other deficiencies of the MVI proposals in this docket are collectively considered, the utilities’ MVI approaches remain inferior to the NFF. In IIEC's view, an illegal and poorly conceived MVI will do more harm to an emerging competitive market place for energy, than would continuing with the NFF process.

In terms of alleged legal deficiencies, IIEC argues in part that bids and offers used in the utilities' proposals do not meet the statutory requirements under Section 16-112(a). (IIEC brief at 7-8) IIEC says Section 16-112(a) calls for a market traded index to be based on options or futures contracts or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, and that the utilities' use of bids and offers does not meet this requirement.

IIEC also argues that from a legal standpoint, the MVIs proposed by ComEd and IP consider an erroneous market in that there is no evidence to substantiate that the "markets" envisioned by ComEd and IP actually exist for retail customers; that the ComEd and IP MVIs do not consider a market in which the utilities sells and the customers in their service areas buy, power and energy; and therefore, by definition, the "markets" upon which they rely to determine the market value are contrary to law. Even then, IIEC argues, such proposals by ComEd and IP only consider a subset of the market. (IIEC brief at 8-9; IIEC brief on exceptions at 19-21)

IIEC also argues that the proposed MVIs do not account for each of the years specified under the NFF, contrary to Section 16-112(a); that the IP and ComEd proposals produce market values that are not reflective of the market because of undue influence; and that the IP proposal improperly denies PPO service to customers with a CTC of zero. (IIEC brief at 9-10; IIEC brief on exceptions at 3, 11, 13-14 and 21-22)

The above-referenced legal deficiencies alleged by IIEC are further discussed in other sections in this order.

IIEC says it would support a market value index approach that meets the requirements of the law and is a fair and accurate representation of the market in which utilities sell and customers in their service area buy power and energy. (IIEC brief on exceptions at 11-12) IIEC contends that such an approach should be based on market information which is transparent and easily accessible to customers; reflect a market or markets of sufficient volume and activity so as to prevent or minimize the potential for manipulation of the market due to thinness; reflect all, or nearly all, types of transactions in the market or markets; include mechanics in the methodology to deal with potential manipulation; provide meaningful mechanisms for independent oversight; and to the extent a basis adjustment is used, incorporate mechanisms to ensure against arbitrary adjustments to the market value. The MVIs proposed by ComEd and IP are, in IIEC's opinion, insufficient in these respects.

Moreover, IIEC argues, there is no pressing need for the Commission to affirm an MVI over the NFF simply for the sake of implementing something different than the NFF. It appears to IIEC that the marketplace is beginning to take shape in the ComEd service territory. (IIEC brief at 3) IIEC asserts that the NFF process has not impeded the emerging market in the ComEd service territory, and that customer switching momentum was building well before ComEd put its current MVI mechanism in place. (Id., citing Tr. 1193-1194)

Despite the utilities' criticisms of the 1999 NFF results (prices applicable in 2000), IIEC says actual results on summer peak pricing (the most volatile period) showed the NFF values a much better predictor of prices than the ComEd MVI approach, and that the NFF process is producing market values significantly greater than what had been reported in the past. On this point, IIEC says it compared 1999 NFF prices, $32/MWh, to Into ComEd forward market price quotes (over $150/MWh) to actual average prices of $37/MWh experienced in July and August. (IIEC brief at 4, citing IIEC Ex. 2 at 11-13). According to IIEC, the 2000 NFF reflected market prices almost 35% greater for summer on-peak prices and 25% greater for non-summer on-peak prices than comparable values reported in 1999 (IIEC brief at 4, citing IIEC Ex. 2 at 11), and the NFF also received 5,953 contract summaries, and actually used 2,624 contracts to arrive at the market value. (Tr. 386)

IIEC believes the 2000 NFF report should allay many of the utility criticisms addressed to the 1999 NFF. While acknowledging that the transactions reported in the NFF process are somewhat older than the forward market observations under the MVI, IIEC states that the NFF transactions are actual transactions, and are not reliant on bids or offers.

In its exceptions, IIEC asserts that the NFF process has certain advantages over the MVI index proposals made by the utilities in these dockets. IIEC claims that the NFF process does not provide electric suppliers with advantages over electric customers. It argues that only players in the wholesale market are entitled to obtain the pricing data which underlies the MVI process and only the utility knows the data used. IIEC contends that the MVI process is a black box to which only the utilities have access, while the NFF process, to the extent it is considered to be a black box process, is equally black to all parties. (IIEC brief on exceptions at 21)

IIEC says it is not oblivious to the Commission's recent interim order in Docket No. 00-0259 (April 27, 2000), wherein the Commission authorized ComEd to implement its proposed market index based tariff, subject to certain modifications. IIEC states that the Commission did acknowledge the concerns of IIEC and other parties that went to the potential "thinness" of the market and the potential for manipulation and the unregulated nature of the internet based markets. These concerns and problems with the proposed MVIs are, in IIEC's view, alive and well, and justify rejection of the ComEd and IP MVIs.

IIEC also argues approving the utilities' MVI proposals may place consumers at considerable risk inasmuch as the utilities argue, as a matter of law, that they need not accept any proposed modification or change by the Commission. Therefore, IIEC submits, once the utility MVI is in place, it may very well remain in place despite later learned flaws. The Commission would be well served, IIEC asserts, to heed cautions against "Buyer's remorse" in this regard. (IIEC brief at 5, citing Staff Ex. 3.0 at 17-18)

However, if the Commission intends to approve an MVI in this proceeding, IIEC recommends at a minimum certain modifications, one of which would be a one year time limit on the approval of the MVI, also known as a "sunset" provision. (IIEC brief at 6) As noted above, the hearing examiner's proposed order recommended adoption of a sunset provision that would require the utilities to file new tariffs on January 1, 2003, and would provide that the tariffs approved in this proceeding will cease to be effective at the conclusion of the customer's May, 2004 billing period. In its brief on exceptions, IIEC proposed that those dates be changed to January 1, 2002 and January 1, 2003, respectively. IIEC argues that, in the best of circumstances, the Commission would hire an NFF in February of 2004 to determine market values for 2005. IIEC claims that, in the worse of circumstances, the Commission would not be able to hire a new NFF until February, 2005 to determine market values for 2006.

IIEC contends that there may be no meaningful alternative to the MVI approach under the sunset schedule contained in the proposed order. IIEC states that during the period of the current hearing cycle, one of the proposed data sources, Bloomberg, disappeared due to lack of volume. IIEC contends that other changes could occur as quickly and effect the MVI proposals much more rapidly than contemplated by the sunset schedule contained in the proposed order. IIEC claims that if the data sources used by the utilities disappear, the Commission, under the sunset proposal contained in the proposed order, would not be able to address the problem until well into 2004 and by then, it may be too late. (IIEC brief on exceptions at 14-16)

In its reply brief on exceptions, IIEC objects to IP's proposal to lengthen the sunset period to December, 2004, arguing that this proposal is not helpful from the point of view of customers. IIEC argues that under such circumstances, the Commission could appoint a new NFF to establish market values that would not be effective before January 1, 2006, the last year in which utilities are entitled to recover transition charges without approval of the Commission. (IIEC reply brief on exceptions at 4)

IIEC argues that while IP seeks to tie the end of the sunset period to the end of the mandatory transition period, there is not any legal or policy basis for the nexus. IIEC also asserts that, contrary to IP's suggestion, extending the sunset period would not be beneficial to residential customers, any flaws in the MVI approach as approved in this proceeding should be addressed before residential customers are exposed to them. (IIEC reply brief on exceptions at 4-5) Finally, IIEC recommends that the Commission disregard IP's "veiled threat" that it would not accept a sunset provision without "more compatible dates". (Id. at 3)

As discussed above, the hearing examiner's proposed order on reopening recommended adoption of a sunset provision which would require the utilities to file new tariffs by October 1, 2002 and would provide that the tariffs approved in this proceeding will cease to be effective no later than the conclusion of the customer's May, 2004 billing period. In its brief on exceptions on reopening, IIEC recommends that those dates be advanced to January 1, 2002 and May 1, 2003, respectively. (IIEC BOE on reopening at 4) In its RBOE on reopening, IIEC states that it agrees with NewEnergy's recommendation that the MVI tariffs approved in this case, if any, should sunset no later than May 1, 2003 and the utility should be required to file new tariffs on April 1, 2002. IIEC also recommends that any call for "further discussions (and the like)" among the parties be ordered to begin in sufficient time for potential resolution prior to the April 1, 2002 filing deadline. (IIEC RBOE on reopening at 2)

In its reply brief on exceptions, IIEC responds to the arguments in ComEd's brief on exceptions that the market value used to calculate transition charges is "anything other than the retail value." (IIEC reply brief on exceptions at 8-9) IIEC argues that the NFF process followed to date has been directed toward the development of a retail market value. IIEC claims that this is consistent with the legislature's description of market value in the context of the definition of transition charge under Section 16-102 of the Act.

With regard to the Commission's previous decisions on this issue, IIEC claims that the Commission rejected a proposal that the NFF be directed to calculate both a retail and wholesale value, and instead suggested that the NFF may calculate both a retail and a wholesale value if it wishes to do so. (IIEC reply brief on exceptions at 9, citing Docket No. 00-0007, Order at 25) IIEC asserts that in Docket No. 99-0117, the Commission does not set out any substantive Commission position on the issue of whether market value should be "retail" or "wholesale." (IIEC reply brief on exceptions at 9, citing Docket No. 99-0117 Order at 88) IIEC concludes, therefore, that ComEd's argument regarding prior Commission decisions must be rejected.

5. Staff

By way of introduction, Staff asserts that the market indexes proposed by the utilities appear likely to produce higher market values and lower transition charges than the NFF process. (Staff brief at 11) Staff also says the NFF process has been criticized by various witnesses.

According to Staff, Staff witness Zuraski's testimony highlighted the significant differences between the currently-effective NFF-based MVs, the recently-released NFF-based MVs for 2001, and the MVs generated by the proposed market index tariffs. In comparing the end-results, Mr. Zuraski stated that the index tariffs generally produce higher MVs than the NFF reports, to date. In enumerating the alleged weaknesses of the NFF process, he testified that the NFF process is very expensive; that there is significant testimony in this docket already that the NFF process is producing outdated results that under-estimate contemporary levels of market prices; and that it is preferable to divorce the observation and estimation of "market value" as much as possible from the Illinois service territories within which these market value estimations will be applied in transition charges.

On the third point, Mr. Zuraski stated that if observations of retail prices within a utility's service territory are utilized to compute transition charges, there will tend to be a downward spiral over time in the observed market values that would contribute to retarding the development of competition throughout the transition period; and that the NFF approach of tying the utility's transition charge to the prices observed in the utility's retail marketplace should tend to crowd out otherwise viable unbundled deals.

Mr. Zuraski concluded, “Because the index proposals appear likely to produce higher market values and lower transition charges than those of the NFF, I recommend that the Commission approve the proposals, with whatever modifications are deemed appropriate by the Commission.” (Staff brief at 15, citing Staff Ex. 3.0 at 50)

Staff next argues that the Commission should encourage the utilities to make other adjustments to further increase MVs for several reasons. First, Staff argues, despite their superiority over the NFF process, the market index tariffs proposed by the utilities are not omniscient oracles of “market value.” (Staff brief at 15) Staff says numerous witnesses testified that uncertainty remains over the index tariffs’ accuracy and integrity in representing the prices most relevant to the “the market in which the utility sells, and the customers in its service area buy, electric power and energy.” However, Staff asserts, the cost of getting it wrong in a downward-biased direction is well-known and certain. Specifically, Staff contends, if the market values are “too low,” then ARES, and other RESs that are otherwise willing to offer lower rates than retail customers are paying for bundled service from the utility, will nevertheless find it difficult or impossible to show the majority of those customers any savings during the transition period. Thus, Staff argues, lower MVs will stymie the development of an effectively competitive electricity market, which the Commission is duty-bound by the Act to promote. (Staff brief at 16)

Second, Staff asserts, the Commission should encourage the utilities to make other adjustments that further raise MVs because, under the Act, utilities are entitled to but not required to impose transition charges on their retail customers. Staff says this provision of the law allows for the two extremes: (i) zero transition charges or (ii) the maximum transition charges to which the utility is entitled. However, Staff argues, since it serves no valid purpose to limit a utility to these two extremes, a reasonable interpretation of the statute would authorize any level of transition charges between these extremes, as well, as long as the transition charges are imposed in a non-discriminatory manner. It should be recalled, Staff submits, that under Section 16-112, the utilities cannot be forced by the Commission to accept any modifications to their market index tariff proposals. (Staff brief at 20)

Staff also addresses whether the Commission should create a “single market index template” that would be virtually uniform across all Illinois electric utilities that are empowered to and choose to impose transition charges. As noted by Staff, the Commission cannot force any utility to accept a uniform market index tariff. In Staff’s view, the end result of an effort to create a uniform tariff could be that some utilities accept while other utilities reject the uniform market index, choosing instead to retain the NFF-based market values. In Staff’s view, such an end result may produce more variation between utilities than would the adoption of closely-related but otherwise utility-specific market index tariffs. For this reason, Staff does not propose a uniform approach in this docket. Staff believes that replacement of the generally lower NFF-based market values with generally higher market index-based market values is a more critical priority.

In response to IIEC’s recommendation for a one year “sunset", Staff says it does not support such a proposal. Staff is concerned that the end result of such a sunset may be a return to the NFF-based approach on the sunset date. In Staff’s view, an alternative to a sunset provision would be to rely upon a process whereby the Staff or some other party could petition the Commission to investigate the utilities’ tariffs or the Commission could open an investigation on its own motion. (Staff reply brief at 13-14)

Staff also responds to, and disagrees with, IIEC’s argument that bids and offers do not meet the statutory requirements under Article XVI. Staff says the Act essentially refers to exchange traded or other market traded index contract or contracts in the same manner as it refers to exchange traded or other market traded options contract or contracts or exchange traded or other market traded futures contract or contracts. In particular, Staff asserts, these are all examples of data sources that a tariff can reference to establish market values. In Staff’s opinion, all of the utilities have proposed to utilize observations of exchange traded or other market traded contracts for electric power and energy, within the meaning and scope of the statute. Staff says the Act does not define an "index," but it is well within reason to refer to the day-ahead off-peak surveys of prices as market traded index contracts, just as it is well within reason to refer to the forward on-peak data source as either market traded indexes or even market traded futures. Second, Staff believes bids and asks and agreed-upon trade prices are all observed measures of the value of contracts, rather than contracts per se. (Staff reply brief at 8-9)

Staff also responds to IIEC’s argument that the proposed tariffs consider an erroneous market and only a subset of that market. (Staff reply brief at 9-10) Staff asserts that IIEC is interpreting the statute too narrowly. According to Staff, the statute specifically authorizes the use of a futures contract in making the market value determination, but there will never be an electricity futures contract that conforms to the way in which retail customers purchase electricity. It is widely recognized, Staff asserts, that futures contracts routinely specify rigidly standardized wholesale-oriented products. In short, Staff argues, the legislature simply cannot be insisting that the basic raw data source for market value tariffs (including futures contracts) represent the manner in which retail customer purchase their goods because futures contracts automatically fail that litmus test.

Staff also responds to IIEC's argument that the market value indices fail to account for the years specified by the NFF. In Staff's view, this point is moot, because the NFFs have not produced multi-year determinations of market value. (Staff reply brief at 12-13)

6. CILCO

CILCO believes the Commission can best achieve the balance between the utility's reasonable opportunity to obtain a return on its investments and the benefits to be gained from competition by approving, in this proceeding, pursuant to Section 16-112 of the Customer Choice Law, tariffs that accurately reflect the market value of the power and energy to retail customers. (CILCO brief at 2; CILCO reply brief at 1-2) Raw market indices which lack certain adjustments proposed by CILCO and others in this proceeding will not, in CILCO's opinion, fairly represent the retail market value of power and energy that competitive suppliers must earn to cover their costs so that they are willing to enter the market. CILCO claims market entry will be discouraged, and customers will lose opportunities to lower their electric costs. Furthermore, CILCO argues, raw indices understating the retail power's true worth would not accurately reflect the revenue the General Assembly recognized that existing utilities could realize from competitive retail sales, which together with transition charges would provide utilities the reasonable opportunity to obtain a return on their investments.

CILCO states that while its delivery service tariffs do not currently provide for the recovery of transition charges, CILCO is actively engaged in competition for electric customers in the service territories of other Illinois utilities, and consequently is interested in the Commission's efforts in these proceedings to establish accurate market values for power and energy. CILCO says market values that are below the true market value of power and energy will hinder CILCO's ability to offer economical electricity to customers. In general, CILCO advocates adjustments to the wholesale market indices to reflect load uncertainty characteristics of retail markets; planning reserve requirements and capacity-backed source requirements to obtain network transmission. CILCO also says it supports ComEd's twice a year market value updates over Illinois Power's monthly updates.

7. Unicom; Nicor Energy; PE Services

Unicom says it "supports and applauds" the overall effort to replace the neutral fact finder. In its brief, and in the testimony of its witness, Unicom identifies four areas for improvement.

First, Unicom argues, the index or market from which the market value of energy is calculated ultimately should be uniform across all Illinois utilities. (Unicom brief at 1)

Next, Unicom asserts, the use by Ameren and Illinois Power of day-ahead spot prices to establish off-peak market values must conclude with similar results. Third, Unicom contends that Illinois Power should increase the amount of time for customers to choose delivery services. Finally, Unicom argues, adjustments must be made to the ComEd PPO so that PPO customers pay imbalance charges that reflect the actual costs borne by ComEd as transmission provider for those customers. (Id. at 7; Unicom reply brief at 1-4)

In its testimony, **Nicor Energy** raised an issue with regard to the Applicable Period A/B method proposed by ComEd and Ameren. Nicor did not file an initial brief. In its reply brief, Nicor says that while it "would stipulate at this point in time that it would be too burdensome for the utility to change it's A/B period method of calculating summer and nonsummer market values," Nicor believes the Commission should "retain jurisdiction over the market index methodologies, and enter another Interim Order to be able to appropriately modify and update the methodologies as the Illinois electricity markets develop." (Nicor reply brief at 5)

PE Services did not file testimony or an initial brief. In its reply brief, PE Services cautions the Commission against adopting minimally acceptable MVIs based on the "anything is better than the NFF standard" or on the utilities' purported unwillingness to make appropriate adjustments to their MVI proposals. (PE Services reply brief at 5) PE Services also cautions the Commission against losing the ability to review the MVIs without facing the unwanted choice of either maintaining the minimally acceptable MVI status quo or forcing utilities back to the NFF. Toward this end, PE Services says monitoring is a useful idea the Commission should adopt either by entering an interim order that allows review, at least until a period after Summer 2001 actual data is available to analyze, and modification of the MVIs, or by conditioning approval of the MVIs on adoption of a sunset provision. (Id. at 8)

As previously noted, the hearing examiner's proposed order recommended adoption of a sunset provision that would require the utilities to file new tariffs on January 1, 2003, and would provide that the tariffs approved in this proceeding will cease to be effective at the conclusion of the customer's May, 2004 billing period. In its brief on exceptions, PE Services recommends a one year sunset provisions and would replace the dates identified immediately above with September 1, 2001 and May 2002, respectively. (PE Services brief on exceptions at 2-3 and Appendix A at 1)

In response to IP's assertions that IP is unwilling to accept certain modifications to its proposal, PE Services says claims by utilities that they are unwilling to accept adjustments should not influence the Commission to adopt minimally acceptable MVIs. (PE Services reply brief at 5)

8. AG

The AG did not present witnesses, but did submit initial and reply briefs. In the AG's view, all utilities should be required to use the Into-Cinergy market to obtain data for determining the market value of electric power and energy. (AG brief at 18) The AG says the Into-ComEd market's smaller size allows a single large party to indirectly manipulate that market. The AG asserts that the Into-Cinergy market is far more liquid than the Into-ComEd market, and that the Into-Cinergy market data does not require a basis adjustment.

The AG also believes all utilities should have to use the Applicable Period A and Applicable Period B method for calculating market value charges, and the associated CTCs. The AG believes the Applicable Period A/B method is less confusing than the twelve month method advanced by IP. The AG says IP's 12-month method inherently offers less data with which to calculate a market value, and provides too little time to decide whether or not to take delivery services. (AG brief at 17; AG reply brief at 5-8)

As previously noted, the hearing examiner's proposed order recommended adoption of a sunset provision that would require the utilities to file new market value tariffs on January 1, 2003. In its brief on exceptions, the AG recommended that the order include language that would provide for parties to present to the Commission, prior to January 1, 2003, adjustments or other modifications to the MVI tariffs that workshops or other forums generated by consensus. (AG brief on exceptions at 5-6) In its reply brief on exceptions, the AG recommends that the Commission reject IP's proposal to lengthen the sunset provision contained in the hearing examiner's proposed order. The AG asserts that IP's proposed modification does not allow sufficient time before the end of the transition period for the Commission to correct any problems. (AG reply brief on exceptions at 3)

In addition to establishing a sunset provision, as mentioned above and as described more fully below, the hearing examiner's proposed order on reopening indicated that the Commission has the continuing authority to further investigate the utilities' MVI tariffs in the future to determine if the tariffs are just and reasonable, to propose further modifications, or to order a return to the NFF process. In its brief on exceptions on reopening, the AG suggested that the order be modified to state that in the event that the workshops or other forums generate adjustments or other modifications by consensus of the parties prior to the January 1, 2003 date for filing new market value tariffs, those adjustments or modifications may be presented to the Commission as generated. (AG BOE on reopening at 1-2)

II. METHODOLOGY FOR DETERMINING PRICES UNDER MARKET INDEX PROPOSALS

This section of the order discusses the parties positions on issues relating to the appropriate hub to be used in establishing on-peak prices; concerns over manipulation, thinness and transparency in the electronic trading platforms used as sources of data; locational basis adjustments; use of historical data to develop off-peak prices; and periods for which market values are calculated. For the most part, the order's conclusions on these and other issues are contained in Section V below.

A. Appropriate Hub for Establishing On-Peak Prices

As indicated in Section I above, **ComEd** proposes to use the Into ComEd exchange for establishing on-peak market values for the ComEd service territory. According to ComEd, the Into ComEd hub provides a direct measurement of the market value that is being established; that the Into ComEd hub is one in which Illinois suppliers regularly buy and sell power and energy; that liquidity in the Into ComEd hub has substantially increased and is expected to continue to increase; and that related power marketers are expected to become more active in the ComEd market. (ComEd brief at 10-11)

ComEd states that Staff has questioned ComEd's use of the Into ComEd forwards, proposing instead the use of an Into Cinergy measure. Last year, in Docket 99-0171, ComEd says it proposed utilizing the Into Cinergy hub in its market index proposal, but the Commission rejected this proposal due to concerns whether the Into Cinergy hub was representative to the ComEd service area. ComEd says that is why it developed an Into ComEd measure. (Id. at 11)

ComEd says that to address Staff's concerns regarding the liquidity and likelihood of data being manipulated, it has offered to monitor the relationship between forward prices Into ComEd and Into Cinergy and to provide Staff with parallel calculations of the Market Value Energy Charges ("MVECs") using Into Cinergy forwards contracts for its Applicable Period A and B filings. ComEd contends that this will allow for ongoing monitoring as well as collection of data. According to ComEd, use of Into ComEd data is simpler and more likely to result in appropriate market value estimates for ComEd. ComEd asserts that with its proposed safeguards in place, there is no basis for adopting the Into Cinergy hub based on speculative concerns about "manipulation." (Id. at 11-12)

In its reply brief, ComEd notes that Staff, IIEC and the AG recommend that ComEd utilize the Into Cinergy hub. ComEd says their recommendation is not based on the fact that the Into Cinergy hub would produce a different market value, but on the assumption that the Into Cinergy market is less likely to be influenced or manipulated by ComEd's own bidding and trading behavior. In response, ComEd argues there is no evidence that ComEd could or would manipulate the market. (ComEd reply brief at 16)

According to ComEd, the AG argues that because ComEd has been involved in the majority of trades in the Into ComEd hub, logic would dictate that if this appearance of impropriety is removed, RES/ARES would have more confidence in their ability to profitably operate in Illinois. ComEd claims this argument does not take into account the fact that it is the RES/ARES represented in this proceeding who support use of the Into ComEd hub. (Id.)

ComEd argues that for trading in the Into ComEd hub to be robust, it must be given the opportunity to grow. ComEd contends that if the Commission supports the Into ComEd proposal, liquidity in the hub is likely to increase; however, if the Commission rejects the Into ComEd proposal, ComEd asserts this Illinois hub is less likely to flourish. (Id. at 16-17)

In its brief on exceptions, ComEd notes that the proposed order, as an alternative to modifying its data hierarchy to use only offers rather than the midpoint of bids and offers, proposes that ComEd may modify its tariffs to provide for use of the Into Cinergy exchange for developing on-peak market values. (ComEd brief on exceptions at 5-7, citing proposed order at 114) ComEd says that while it still believes that use of the Into ComEd exchange is a viable option, ComEd would be willing to accept use of the Into Cinergy exchange if the Commission agrees that use of data from the Into Cinergy exchange is preferable. (ComEd brief on exceptions at 7; reply brief on exceptions at 1)

Illinois Power proposes to use Into-Cinergy to measure market value during on-peak periods. According to IP, a viable Into-IP hub does not currently exist, so some other trading hub must be used if parties are to move away from the NFF process. IP indicates that only two trading hubs have been actively advanced by the parties: Into-ComEd and Into-Cinergy. IP contends that the Into-Cinergy hub is reasonably close to the IP service area and that market participants in Illinois commonly trade in the Cinergy market. (IP brief at 10)

The liquidity of the Into-Cinergy hub, IP claims, exceeds that of the Into-ComEd hub. IP contends that during its sample period (from April 24 to May 5), for the Into-Cinergy hub, it observed at least 103 actual trades in the sample and only one contract — April 2001 — did not have any actual trades. IP states that during a similar period for the Into ComEd hub, Staff noted the predominance of bids and asks as opposed to actual trades. IP argues that the use of actual trade data is a better representation of the market's perception of value. (Id.)

IP asserts that ComEd appears to dominate the Into-ComEd market in terms of trading activity. IP claims that the same is not true of the Into-Cinergy market, where not even a company as large as ComEd would be in a position to control the pricing information that would be obtained from the data sources used in the tariffs. IP observes that Staff recommends that ComEd use an Into-Cinergy index. (Id. at 10-11)

IP also responds to what it refers to as an argument by IIEC that the IP-proposed index should be rejected because it uses into-Cinergy which by definition is for an area outside IP's service territory. IP argues that as a matter of law, the statute merely requires that the index be "a function of" an index applicable to the relevant market, and does not require that the trades actually occur in the incumbent's service area. IP claims that the evidence in this case demonstrates that into-Cinergy prices are highly correlated to Lower MAIN prices (with Lower MAIN being the region in which IP is located). (IP reply brief at 11-12)

Ameren proposes using Into Cinergy to measure market value during on-peak periods. According to Ameren, the Into Cinergy price, with an appropriate locational basis adjustment, will accurately reflect the price of electricity delivered to Ameren. Further, Ameren asserts that use of an actively traded market, like Into Cinergy, will reduce, if not eliminate, the possibility of market manipulation. Ameren believes that using the Into Cinergy market will help promote competition throughout Illinois by providing a vibrant market for use as a risk management vehicle. (Ameren brief at 4)

According to Ameren, its proposal is modeled on the methodology reflected in the currently effective ComEd tariff. The principal difference, Ameren says, is that its proposal uses Into Cinergy prices, while the ComEd model uses Into ComEd prices. Ameren states that this is because there is no publicly traded index for the Into Ameren market. Ameren indicates that it proposes to use the regional Into Cinergy prices, adjusted to reflect Ameren-specific characteristics. (Id. at 4-5; Ameren Ex. 1.0 at 4)

Ameren claims use of Into Cinergy index data is appropriate because that regional index is applicable to the market in which power for the Ameren market is bought and sold. Ameren says that it assessed whether there is a correlation between the Into Cinergy and Into Ameren markets. According to Ameren, its analysis showed that the correlation coefficient of these two data sets is 0.995 -- almost one-to-one. Ameren concludes that the Into Cinergy data is applicable to the Ameren market, and satisfies the requirements of Section 16-112 of the Act. (Ameren Ex. 6.0 at 1; Ameren brief at 5)

According to Ameren, none of the reasons offered by Unicom for using the Into ComEd market as the uniform base index for calculating market values in the State of Illinois, as discussed below, are valid. Ameren contends that Unicom provided no support for its assertion that the Into ComEd market is the most liquid in Illinois. Ameren argues that liquidity is still a major concern at the ComEd hub and that the liquidity at the ComEd hub might well be a good reason not to choose the ComEd market for a base index. Ameren says it will not enter that debate, except to state that liquidity concerns about that hub are clearly a reason not to require its use elsewhere at this time. According to Ameren, experience may well demonstrate, in the future, that the Into ComEd hub is a viable mechanism for determining market value throughout Illinois, but that cannot be demonstrated today. (Ameren brief at 5-6)

In response to Unicom's assertion that non-Illinois hubs create difficult problems in translating non-Illinois prices into Illinois prices, as discussed below, Ameren states that the basis adjustment problem for Ameren and IP would be no better, and perhaps worse, if they were required to use the Into ComEd hub. (Ameren Ex. 4.0 at 5) Ameren claims that basis adjustments for IP and Ameren markets are calculated based on daily and forward data from one of the most liquid hubs in the country (Into Cinergy) and daily data from the less liquid Southern MAIN. Ameren claims that it would be inappropriate to substitute Into ComEd for Into Cinergy, resulting in the use of variables of lesser liquidity to calculate the basis. (Id. at 6; Ameren brief at 6-7)

Ameren argues that Unicom's assertion that a single base index would "lay a solid framework for competition" and "be easier for ARES and customers to interpret and plan against" would be true only if its first two points were correct. (Id.)

Ameren responds to a purported contention by IIEC that the MVI proposals overstate the market value of power and energy. Ameren says IIEC's only "evidence" for this point is a meaningless comparison of market forward prices and "actual" spot prices. Ameren argues that spot prices are no more "actual" than market forward prices; they only differ as to timing. What the record does demonstrate, according to Ameren, is that the forward prices derived by the NFF drastically understate the forward prices in the market. Ameren contends that IIEC's mismatch of spot and forwards does not support its assessment of the development of competition in Illinois. (Ameren reply brief at 2)

Ameren states that the point is not to select a result-oriented mechanism that develops prices that are high or low, depending on a particular party's goal. Ameren argues that what the Commission should do is select the mechanism that produces the most accurate measure of market value. According to Ameren, the NFF is so seriously flawed that it cannot be reasonably said to be accurate and even a flawed MVI proposal is superior to the NFF. (Ameren reply brief at 2)

Staff notes that ComEd proposed to base its on-peak market values on Into-ComEd data, while IP and Ameren proposed to base their on-peak market values on Into-Cinergy data. Staff's proposal is to use Into-Cinergy data for all three utilities' market indexes, with the application of suitable basis differentials. (Staff brief at 21)

Staff asserts that Into-Cinergy prices appear to be highly correlated with Lower MAIN (within which IP and Ameren reside). Staff observed that the correlation coefficient of these two data sets is 0.995 -- almost one-to-one. Regarding the relationship between the ComEd and Cinergy hubs, Staff suggests that the average correlation between daily prices within each month has been about 97% during the last three years. (Id. at 21-22)

Staff contends that a more complete set of transaction price data can be culled from observations of the Into-Cinergy forward market contracts traded on Altrade and Bloomberg Powermatch. Further, Staff argues that the Into-Cinergy market is less likely to be influenced or manipulated by ComEd's own bidding and trading behavior. (Id. at 22)

Staff recommends that the proposal by Unicom to rely on Into-ComEd input price data for the market indexes of Ameren and IP be rejected. According to Staff, the Into-ComEd market prices are no more relevant to Ameren and IP than are the Into-Cinergy prices. Staff also notes that a basis adjustment for IP and Ameren would have to be considered whether using Into-ComEd or Into-Cinergy data, effectively refuting Unicom's reason for relying on Into-ComEd data. (Id. at 22-23)

Staff concludes that for all three companies' market index tariffs, the Into Cinergy hub is the most appropriate one to observe for gathering on-peak market price input data. (Id. at 20)

In response to NewEnergy's recommendation that the Into ComEd hub should be used by ComEd, as discussed below, Staff claims that NewEnergy did not demonstrate that on-peak prices of the Into-Cinergy hub, used to estimate ComEd's Market Value Index, were incorrect compared to Into-ComEd on-peak prices. Staff notes that NewEnergy discusses the possible manipulation/thinness/transparency of electronic trading platforms with reference to the Into-ComEd trading point. Staff states that NewEnergy discusses the use of bids and offers in the absence of actual transactions, with reference to ComEd's data hierarchy, and makes a recommendation that applies solely to the Into-ComEd trading point. According to Staff, these potential problems arise because of the lack of liquidity at the Into-ComEd trading point. (Id., citing NewEnergy brief at 20-22) Furthermore, Staff says NewEnergy provided no evidence that its indirect approach to on-peak pricing issues is more effective than Staff's direct approach of using the Into Cinergy hub. (Staff reply brief at 2-3)

Staff notes that IIEC takes issue with IP's use of Into-Cinergy rather than Into-IP forward market prices. Staff argues that IIEC relies on an inappropriately narrow interpretation of the Act's phrase, "applicable to" the market in which the utility sells, and the customers in its service territory buy, electric power and energy. Staff contends that IIEC basically equates the Act's concept of "applicable to" with the more rigid concept of "delivery within." Staff states that there is an extremely high correlation of prices at Cinergy with prices in Lower MAIN where IP is situated. Staff concludes that Into-Cinergy is very much applicable to IP's service territory. (Staff reply brief at 11)

Staff agrees with IIEC's contention that 5x16 and 1x8 contracts are merely subsets of the entire market. In Staff's view, there should be adjustments to the 5x16 and 1x8 contract prices to render them more relevant to the prices that retail customers might see. However, Staff disagrees with IIEC assertions, as discussed below, that the law precludes the tariffs from employing subsets of the relevant markets as data sets for determining market values. Staff says that there will never be an electricity futures contract that represents anything but a small subset of the overall market. According to

Staff, the statute cannot mean that the futures contract (or any other contract) observed must be identical to the only electricity product used by retail customers. Staff asserts such an interpretation renders it fundamentally impossible to ever have a market index tariff. (Staff reply brief at 11-12)

NewEnergy supports the portion of ComEd's proposal that would use a methodology based on Into ComEd rather than a methodology based on Into Cinergy plus a basis or location adjustment for customers in the ComEd service territory. NewEnergy also supports the portion of the Ameren and IP proposals that incorporate the Into Cinergy trading point, and recommends that the Commission rely upon such hubs for the Ameren and IP service territories. (NewEnergy brief at 14-15)

NewEnergy disagrees with Staff's recommendation that ComEd's market-index proposal be modified to incorporate an Into Cinergy methodology for the use of on-peak data. (NE Ex. 2.0 at 7) NewEnergy claims that if an inappropriate methodology is used to calculate the market value in Illinois, all developments in the market since October 1, 1999 are at serious risk. On this point, NewEnergy says competition could well come to a "screeching halt"; and a liquid hourly trading market will not develop. (NewEnergy brief at 15)

According to NewEnergy, the establishment of a proper methodology to calculate the market value will lead to the development of a competitive retail electric market. NewEnergy argues that if the market value is calculated correctly by accounting for adjustments that reflect the true cost of providing power and energy to serve retail customers, competition will thrive because additional ARES will come into Illinois and those already present will remain active in the Illinois retail electric market. NewEnergy claims that Staff's suggestion would negate the objective of bringing more liquidity into the ComEd-trading hub and thus hamper the further development of a competitive marketplace with numerous participants. (Id.)

In its reply brief on exceptions, NewEnergy responds to the statement in ComEd's brief on exceptions that ComEd is willing to accept use of the Into Cinergy exchange if the Commission agrees that use of data from that exchange is preferable. NewEnergy asserts that such a result would lead to market manipulation and would preclude the development of an Into ComEd market. (NewEnergy reply brief on exceptions at 9)

NewEnergy contends that use of the Into Cinergy exchange for developing on-peak market values for ComEd is not supported by the record and that abandonment of the Into ComEd exchange at this time will forever retard the development of a competitive market in the ComEd service territory. (NewEnergy reply brief on exceptions at 12 and 14)

It is **IIEC's** contention the ComEd and IP MVIs fail to meet the requirements of Section 16-112(a), in that the markets they assume to exist are in fact markets in which customers are not currently buying power and energy. Section 16-112(a) requires that the market value be determined by either the NFF process, or "as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy . . . . " IIEC says the statute provides that if a market traded index is to be considered, it must be applicable to the market in which the utility sells and the customers in its service area buy, power and energy. (IIEC brief at 11; IIEC brief on exceptions at 13-14)

In its brief on exceptions, IIEC suggests that the hearing examiner's proposed order should be modified to reflect, in greater detail, IIEC's recommended alternative to the MVI indices. On this issue, IIEC suggested that the Commission should consider a combination index approach. (IIEC brief on exceptions at 10) In its reply brief on exceptions, ComEd responds that IIEC's proposal consisted of seven lines of testimony, and did not contain any details. (ComEd reply brief on exceptions at 14, citing IIEC Ex. 2.0 at 13-14 and Tr. At 761-762) ComEd argues that despite having almost two years to do so, IIEC never actually developed a proposal, and instead merely suggested that the parties should continue to work together to develop a composite market index. (ComEd reply brief on exceptions at 14)

IIEC claims that it is unaware of any customer in these utilities' service territory buying power and energy in the manner of the markets measured in the MVI. According to IIEC, there is simply not yet in existence a market in which the utilities sell and the customers in their territories buy electric power and energy that excludes retail transactions. IIEC asserts that the only current source for information on retail transactions is the NFF. (IIEC Ex. 2 at 9-10) IIEC argues that if customers cannot, or do not, participate in purchasing forward 5x16 wholesale power, an MVI reliant on observing that market cannot represent the market in which customers in the utility service territories buy electric power and energy. (IIEC brief at 11)

IIEC states that notwithstanding the clear direction of Section 16-112(a) of the Act, the Cinergy forward price recommended by IP reflects prices in a market that is outside of the IP service territory, and is outside a market in which IP sells and its customers buy, power and energy. According to IIEC, as a matter of law, the Cinergy forward price proxy is contrary to the stated requirements of Section 16-112(a). (Id. at 12)

In IIEC's view, the Into Cinergy market is different than the Into IP market. IIEC claims that the IP proposal is using the Into Cinergy market as a proxy for the price in the market in which IP sells and its customers buy. IIEC says that IP is using a forward market price as a proxy for cash energy prices. IIEC argues that the resultant prices are different and, therefore, the markets are different. (Id.)

IIEC suggests that two markets being "reasonably close" may not be suitable for developing market prices. (IIEC Ex. 1 at 5) IIEC asserts that IP has failed to demonstrate the relevancy and materiality of the prices in these markets, for comparison purposes. IIEC agues that IP has the burden, and failed in this regard, to explain why being reasonably close merits comparability. (IIEC brief at 12)

According to IIEC, as the Into Cinergy market is demonstrably thin, any number of trades on a going forward basis is likely to arbitrarily influence the market value, which further demonstrates that it is unlikely the Into IP and Into Cinergy markets are comparable for purposes of determining market value. (Id. at 13)

IIEC indicates that it continues to be concerned about the appropriateness of either the ComEd or Cinergy hub. However, if either hub is used, IIEC says the Cinergy hub is preferable to the ComEd hub. IIEC contends the ComEd hub lacks the volume and vigor necessary to discourage manipulation. (IIEC reply brief at 9) IIEC claims that the ComEd hub, such as it is, is completely dominated by ComEd while the Cinergy hub is not dominated by any one utility. IIEC says that even IP recognizes the liquidity of the Into Cinergy market exceeds that of the Into ComEd market. IIEC also states that ComEd witness Crumrine said he would rather use the Into Cinergy hub, if the only alternative was a return to the NFF. (IIEC reply brief at 10)

IIEC says that ComEd argues the Into ComEd hub is a direct measurement of the market value being established. IIEC disagrees. IIEC contends that it is a ComEd-created index based on data reflecting primarily ComEd's own transactions and its own bids and offers. According to IIEC, it does not reflect the market in which customers in ComEd's service area buy because retail customers in the ComEd service territory cannot participate in the wholesale market. IIEC says that even ComEd recognizes this fact when its witnesses testified that the Into ComEd hub is the one in which "suppliers" (not retail customers in its service area) buy and sell. (IIEC reply brief at 11)

IIEC says ComEd also misunderstands the Commission's rationale for rejecting the Cinergy futures (NYMEX Exchange) in Docket 99-0171. IIEC indicates that the Commission did conclude that the Cinergy index proposed by ComEd in that docket was flawed and could not be adopted at that point in time. IIEC says the Commission was concerned with less than robust trading, a thinly traded market, and the possibility of market manipulation. IIEC asserts that the ComEd market is still thinly traded and the potential for market manipulation is thereby increased. Therefore, IIEC concludes, to the extent that the Commission is inclined to use Cinergy as a proxy for on-peak prices in the IP service territory, it should use it as a proxy for the on-peak prices in the ComEd service territory as well, pending the further development of the anemic ComEd market. (IIEC reply brief at 11-12)

In its reply brief on exceptions, IIEC states that it continues to object to the market value index approach presented by ComEd and IP. However, IIEC suggests that if the Commission is truly concerned about the possibility of manipulation of the Into ComEd exchange, it should accept ComEd's offer to use the Into Cinergy exchange in lieu of using "offers only" for the Into ComEd exchange. IIEC asserts that given the apparent greater volume and liquidity in the Into Cinergy exchange, manipulation by any party would be more difficult. IIEC states that use of the Into Cinergy exchange would also allow for the use of publicly available trade data, as in the IP proposal to use Power Markets Week as an additional source of pricing data. (IIEC reply brief on exceptions at 10)

Unicom believes that the index or market from which the forward prices are collected and the Market Value of Energy is calculated (the "Base Index") should, at the appropriate time, be the same for each of the state's utilities. (Unicom brief at 1)

Unicom contends that a single Base Index would be more efficient for ARES. (Unicom Ex. 1.0 at 5) Unicom says that ARES need to anticipate and predict the market value of energy and hedge against the values that have been established. A single Base Index, Unicom asserts, would reduce the transaction costs associated with predictive and hedging activities. Unicom claims that a single Base Index is better for customers because it will allow customers to shop more easily for electricity. Unicom says that with a Single Base Index, customers, like ARES, would have to follow and analyze only one index. Unicom argues that multiple indices unnecessarily complicate the shopping process for customers, especially those who are located in several utility service areas. (Unicom brief at 2)

Unicom asserts that the Into ComEd market is the most liquid Illinois market. According to Unicom, it tracks purchases and sales into the ComEd service territory, which is the largest electricity market in Illinois and the most active market for ARES. Unicom claims that use of the Into ComEd market would eliminate the need for a basis adjustment for not only the majority of customers in Illinois, but also the overwhelming majority of customers who have selected delivery services. Unicom suggest that uniform adoption of the Into ComEd market would lay a solid framework for competition. According to Unicom, a single Base Index would be easier for ARES and customers to interpret and plan against. (Unicom Ex. 1.0 at 5-6; Unicom brief at 2)

Unicom states that Ameren and IP registered strong resistance to the suggestion that the Commission should, in this proceeding, recommend statewide adoption of the Into ComEd market. According to Unicom, the utilities appear to be primarily concerned with the liquidity of the Into ComEd market and the correlation of prices in that market with prices in the utilities' service territories. (Unicom brief at 3)

Unicom says that given the utilities' resistance to Unicom's proposal and the utilities' ability to veto any changes to their tariff proposals, pursuant to Section 16-112(m) of the Act, it may be that statewide adoption of the Into ComEd market, at this time, would be premature. Unicom contends that this proceeding has established, however, the significant competitive benefits of a single Base Index for all utilities. Accordingly, Unicom recommends that the Commission monitor the development of Illinois trading hubs, specifically the Into ComEd market, and at the appropriate time open a proceeding to consider the adoption of a uniform Base Index based on an appropriate Illinois hub. (Id.)

The AG observes that IP and Ameren propose the use of the Into-Cinergy market, while ComEd advocates using the Into-ComEd market. According to the AG, the Commission's decision to consolidate these dockets is a strong indication of its desire for uniformity. The AG contends that in this post Customer Choice Act environment, competition, and the benefits associated therewith, will more likely thrive if market values for electric power and energy are derived from a single market. The AG argues that this approach would take one good component of the NFF process (a single source determining market values for all Illinois electric suppliers) and apply it to the market index methodology process. The AG suggests that confidence in the ability of RES/ARES to operate and compete equally in Illinois could only be enhanced. The AG urges the Commission to issue an order that all utilities use the Into-Cinergy market for data collection to determine the market value of electric power and energy. (AG brief at 9)

As this discussion illustrates, the issue of the appropriate hub for establishing on-peak prices was contested. On this issue, the hearing examiner's proposed order recommended a provision that would allow ComEd to use the Into ComEd exchange with a modified data hierarchy. The AG objected to this portion of the hearing examiner's proposed order. The AG notes that under ComEd's proposal, on-peak market values would be established using two on-line data sources, Altrade and Bloomberg PowerMatch. In the AG's view, the fact that Bloomberg recently discontinued reporting Into ComEd pricing data compounds the problem of thinness at the Into ComEd hub. The AG recommends that the Commission require ComEd to incorporate the Into Cinergy hub into its market value tariff. The AG claims that this has the incidental benefit of having all of the utilities using a single pricing hub, which the AG asserts simplifies entry of competitors into all Illinois power and energy markets. (AG brief on exceptions at 1-4)

Nicor did not file an initial brief. In its reply brief, Nicor supports ComEd's methodology of determining market value from the Into ComEd hub rather than a methodology based on Into Cinergy, if the proper adjustments are incorporated in the MVEC that is applied to serving retail customers on the PPO. According to Nicor, while there are certain concerns associated with utilizing the Into ComEd hub, most notably pointed out by Staff and IIEC, such as thinness of trading and the possibility of utility manipulation, the Into ComEd market should be allowed to develop out of infancy into a robust index that will ultimately benefit all Illinois consumers, which includes both retail and wholesale customers. It is Nicor's position that nurturing a regional hub at the advent of open access for all nonresidential retail customers will advance competition in the long run. (Nicor reply brief at 3)

PE Services did not present testimony or an initial brief. In its reply brief, PE Services claims the record indicates that Into-ComEd is the appropriate hub for the

ComEd territory. PE Services contends that the liquidity of the Into-ComEd market has grown significantly since its inception. (PE Services reply brief at 9)

B. Manipulation/Thinness/Transparency of Electronic Trading Platforms

As previously discussed, the three utilities propose to use certain electronic trading platforms as sources of data to determine on-peak market values for power and energy. They are described as online electronic trading exchanges which post Into ComEd and Into Cinergy forward market prices. IP proposes to supplement these sources of data with a published survey of data from Power Markets Week.

It has been suggested by some parties to this proceeding that the limited number of actual transactions on the electronic platforms, sometimes referred to as market **thinness**, makes them susceptible to **manipulation**. That is, one party may be able to undertake activities which result in market price data on the electronic platforms that are either artificially high or low. It has also been suggested that due to difficulty in obtaining access to bids, offers and actual transaction data on the electronic platforms, there should be concerns over the ability of the markets to self-regulate and that the markets may be subject to manipulation. This concern over access to data is sometimes referred to as a lack of **transparency** in the markets.

As previously discussed, **ComEd** proposed to use Altrade and Bloomberg PowerMatch as the sources of on-peak pricing data at the Into ComEd hub, although the Into ComEd screen has since been removed from the Bloomberg exchange.

ComEd states that no party presented any evidence of market manipulation or even attempted manipulation. ComEd argues that market manipulation is unlikely to occur for three reasons: (a) manipulation would be very costly and difficult, (b) there is no motive for a utility to manipulate the market, and (c) ComEd has put adequate safeguards in place to prevent manipulation. (ComEd brief at 12-13; reply brief at 17-18)

According to ComEd, if a party attempted to increase (or decrease) the market index by making artificially high bids (or low offers), then it would actually have to buy at this artificially high bid price (or sell at the artificially low offer price) and suffer the economic consequences. ComEd contends that any benefit to be obtained from an attempt at manipulation would be limited, because the ComEd market index methodology is based on many different forward prices, and each transaction only contributes to one day's forward price observation for only one contract month. In the event no transactions are consummated, only paired bids and offers for a given contract will be used, and, ComEd argues, manipulation is still difficult because only the lowest offer price (and the highest bid price) is utilized for purposes of the calculation. (ComEd Ex. 4.0 at 7; ComEd brief at 13)

ComEd contends IIEC's assertion that the use of some bid and offer midpoints (in addition to actual transactions) makes the results unreliable, as discussed below, lacks any support in the record. ComEd claims that such bid and offer midpoints are routinely used in markets in the U.S. and around the world. (ComEd brief at 14; citing ComEd Ex. 4.0 at 6)

ComEd contends that IIEC's and NewEnergy's argument that use of bid and offer midpoints increases the potential for manipulation is refuted by the record evidence. ComEd also contends that IIEC's concern that many of the bids, offers and actual transactions for the Into ComEd hub posted on the exchanges involved ComEd is also unwarranted. ComEd asserts that given the volume of power that ComEd buys and sells, it is not surprising that ComEd is involved in a large percentage of transactions. According to ComEd, the fact that one party posts most bids and offers would only be cause for concern if only one side of the bid/offer was being utilized and ComEd was always on the same side. ComEd says that this is not the case here, as it posts both bids and offers. ComEd argues that even with a high level of participation from ComEd, the resulting prices are good indicators of the market value. (ComEd Ex. 4.0 at 7-8)

ComEd also argues that NewEnergy's proposal to utilize only offer prices, as discussed below under "data hierarchies," is an obvious attempt to gerrymander the system to create artificially inflated market values. ComEd contends that the offer price does not represent a price at which anyone can sell or has sold electricity. (ComEd Ex. 4.0 at 10; ComEd brief at 14; reply brief at 22-23; brief on exceptions at 5-7)

ComEd argues that IIEC's objection to ComEd's proposal based on the "unregulated nature" of Internet exchanges lacks support. ComEd says that many, if not most, markets are "unregulated" but nevertheless display accurate price signals. ComEd claims that Altrade and Bloomberg have a strong economic incentive to accurately report bids, offers and executed transactions so that market participants will continue to utilize their services. According to ComEd, the fact that market participants utilize these services is evidence that they are working well. (ComEd brief at 14)

ComEd contends that it is in a utility's best interest to ensure that the market price is accurate. According to ComEd, a market value that is too high (and a transition charge that is too low) results in an economic loss for a utility. Conversely, ComEd contends, a market value that is too low (and a PPO price that is too low) also results in an economic loss as the utility is required to sell below cost. ComEd says that when a market value is set too low, customers that are forecasted to leave their incumbent bundled service utility supplier would not do so, forcing a utility to reacquire electricity resources at prevailing—and potentially higher—market rates. ComEd adds that the utility collects no more revenue under the PPO if the MVI is correct, high, or low because of the direct offset of the MVI error in the transition charge calculation. ComEd argues that it is not the utilities, but those who desire the market value to be too high, that actually have the greatest impetus to attempt to manipulate the market.

ComEd concludes that utilities are unlikely to make artificial bids and offers. (ComEd brief at 15; reply brief at 20)

ComEd states that even though the record shows that market manipulation is highly unlikely to occur, it has taken many steps to alleviate concerns regarding the potential for manipulation. ComEd says it developed internal guidelines that limit interaction between ComEd traders and clerks taking screen prints during the snapshot periods defined in the Market Index tariff. According to ComEd, the clerk will not have knowledge of the prices or positions on these markets and the traders do not know exactly when the screen prints will be taken and do not have access to the screen prints after they have been taken. ComEd also stated that it would not object to a neutral third party taking the snapshot if the Commission deemed such a safeguard to be necessary. (ComEd brief at 15-16; reply brief at 19-20 and 23-24)

According to ComEd, there are 45 distinct trading entities that have enabled both buying and selling trading with ComEd on Altrade; another 94 have access to viewing Into ComEd markets on Altrade; and 13 counterparties have traded forwards contracts with ComEd on Altrade during the year 2000. ComEd argues that the presence of these traders, who can take immediate advantage of any posted bid or offer that is out of line with the overall market, is a substantial safeguard. ComEd says they also will be able to view the screen print data and compare it with their own experience on the exchanges. According to ComEd, this transparency is one benefit of its MVI methodology. (ComEd reply brief at 21) ComEd further argues that through use of alternate sources of information, parties who could not access the electronic exchange data would be able to spot problems with the results obtained through ComEd's methodology. (Id.)

ComEd says that contrary to NewEnergy's statement that "Altrade and Bloomberg will not allow information to be released to a third party," all parties in this proceeding that have signed a confidentiality agreement have received such information from ComEd. ComEd also claims IIEC's statement that "ComEd was not able to provide the observations" for Applicable Periods A and B is disingenuous. ComEd says it offered IIEC access to its Altrade and Bloomberg screen prints, but IIEC chose not to take ComEd up on its offer. ComEd states that Staff did, viewing all of ComEd's screen prints and data through the audit procedure. (Id. at 21-22)

ComEd claims that in the event that actual market manipulation occurred, it would likely be detected. ComEd says that it has provided and will continue to make available records to Staff on the transaction prices from the electronic exchanges, and the pertinent bid and ask midpoints, and Staff will audit this data. According to ComEd, Staff has already audited ComEd's data for both Applicable Period A and Applicable Period B. ComEd asserts that these audits did not reveal any material problems with the data. ComEd says that it has also offered to collect data that would allow for ongoing monitoring of both Into ComEd and Into Cinergy forward prices. (ComEd brief at 16)

As previously discussed, **Ameren** proposes to use Altrade and Bloomberg PowerMatch as the sources of on-peak pricing data at the Into Cinergy hub. In Ameren's view, a market is said to be liquid if the instruments that are traded in that market can easily be sold at approximately current market prices. Ameren states that in a liquid market, large blocks of assets can be sold rapidly without significantly affecting market prices. Ameren asserts that electricity trading at the Cinergy hub meets this definition. (Ameren brief at 7)

According to Ameren, the most widely accessible, transparent, dynamically competitive market media available today for trading Into Cinergy hub forward contracts are the Altrade and Bloomberg PowerMatch trading systems. Ameren says that the Altrade system in particular has been developed by established brokers as a viable trading tool. Ameren asserts that the Altrade system is a powerful tool for multiple market participants, who can list forward price quotes and have them immediately visible to other market participants, who in turn can respond through counter bids and counter offers, ensuring that fair, competitive market values become established. Ameren claims that Bloomberg PowerMatch provides a second, independent source for arriving at competitive, fair market values. (Ameren Ex. 2.0 at 7) Ameren contends that it has selected a liquid index, without a data thinness problem, to be measured by means of reliable and accessible data sources. (Ameren brief at 8)

As previously discussed, **Illinois Power** proposes to use Altrade and Bloomberg PowerMatch as the sources of on-peak pricing data at the Into Cinergy hub. IP also notes that its proposal uses a published survey in addition to the two electronic exchanges used by ComEd and Ameren. IP also says it remains open to adding other reliable data sources. IP asserts that its "market basket" approach dampens, if not eliminates, any concerns about the electronic exchanges. IP claims that its approach undercuts the IIEC's criticism of "elitist" data sources (citing, IIEC brief at 24) because a published survey is about as egalitarian as one can get. (IP brief at 11; reply brief at 13)

According to IP, even if its proposal did not have this additional feature, concerns about the electronic exchanges are misplaced. IP asserts that the electronic exchanges serve as a reflection of the overall market. IP contends that this is so even if the exchange does not include 100% of the trades made for any given trading hub. IP says that if the electronic exchange prices are not reflective of the prices obtainable from other sources (including those not posted publicly), traders will actively seek out opportunities to use those price differences to their economic advantage. Even if someone thought he could manipulate the exchange prices, IP argues that he would face a daunting task in light of the monthly re-valuations used in IP's MVI. Finally, IP states that there are laws (which include criminal sanctions) addressing price fixing and other inappropriate use of market power. (IP brief at 12)

IP claims that thinness is a relative concern. IP states that the market values set by the NFF for the year 2000 were based on a total of 32 contracts (and for some categories as few as 3). IP notes that in just one sample period, it observed 103 actual trades. Because it re-samples the data every month, IP claims that this number represents only a fraction of the likely number of transactions that will be used to set IP's market values over the course of a year. (Id.)

According to IP, transparency is not expected to be a substantial problem for the customers likely to be buying the freed-up power and energy directly from Illinois utilities. (Id.) IP asserts that, consistent with the Act, when a utility has power to sell because a retail customer has decided to obtain power from an ARES, the most likely buyer will not be another retail customer, but another wholesale buyer, especially one who has load to serve because it is now serving retail customers in the utility's service area. (Id. at 8) IP claims that even some retail customers may have access to the trading platforms. IP says that it is also willing to work with Staff to put in place an audit process that would help Staff be satisfied that IP's published values are accurate while nonetheless adhering to any restrictions imposed by the electronic exchanges. IP further asserts that its inclusion of a printed survey that any party may purchase makes at least that portion transparent to all. (Id. at 12-13)

IP says that in theory, it has no objection with the concept advanced by some parties that a third party or the Staff handle the data collection. IP states that the problem is that no one has spelled out the details of such a proposal with enough specificity to put it in to practice at this time. IP indicates that no one has, for example, identified who pays for the expense or how parties can be assured that the data collected is provided to each utility in a timely enough fashion for them to meet their obligations to publish properly adjusted market values and transition charges. IP says the AG appears to mistakenly believe that the current NFF process is funded by the utilities when, in fact, it is funded by the State via appropriations to the Commission from the Public Utility Fund of the state treasury (Id., citing Section 16-112(b) of the Act), which IP asserts receives funds from numerous sources and not just from the electric utilities of this State. IP says it is open to discussing these items and if appropriate solutions can be found, incorporating those solutions into its tariffs. IP argues, however, that its proposal should not be subject to "indefinite delay" while parties identify the relevant issues and work on their solution. (IP reply brief at 12)

NewEnergy states that it has three serious concerns about using the Altrade and Bloomberg trading platforms as the source for pricing data, namely (1) the lack of completed transactions on the Altrade and Bloomberg exchanges for the Into ComEd trading point; (2) the large number of postings that are made by ComEd itself for the Into ComEd trading point; and (3) the fact that the trades need not be consummated in order to impact the market value (i.e., use of bids and offers in the absence of actual transactions). NewEnergy asserts that each of these factors increases the risk of market manipulation.

In its brief on exceptions, NewEnergy suggests that the Commission take administrative notice of the fact that the Into ComEd screen was removed from Bloomberg PowerMatch due to inactivity. NewEnergy states that unless Bloomberg restores the Into ComEd, one of the component parts of ComEd's market value index methodology will not longer exist and, and the breadth of the reporting exchange that ComEd relies upon for on-peak forward market values will be limited to the Altrade exchange. (NewEnergy brief on exceptions at 5-7 and Attachment A at 3)

NewEnergy also argues that removal of the Into ComEd screen from the Bloomberg exchange due to lack of use supports NewEnergy's position that the markets underlying the utilities' proposals are too thinly traded to be relied upon in the manner suggested by the utilities. (NewEnergy reply brief at 2) NewEnergy contends that it is necessary for the Commission to establish additional safeguards in order to protect the integrity of the process. (NewEnergy brief at 17)

According to NewEnergy, one of the most significant problems with using data in a market that has a relatively low volume of trades is the potential for price manipulation. NewEnergy states that in a low volume market, the number of contracts necessary to influence the price would be relatively small, and that the impact of just a few trades would be significant. NewEnergy claims that with fewer trades as a basis for consideration, a single trade could significantly alter the overall price. NewEnergy argues that in a thinly traded market, even good faith trades can result in inadvertent price manipulation. (Id.)

NewEnergy claims that since many major market participants do not actively trade on Altrade and only sporadically trade on Bloomberg, it is entirely possible that trades by ComEd could dominate these systems, thus improperly skewing the price calculations. NewEnergy says that such trades may be between ComEd and one of its affiliates. NewEnergy contends that, as a result, it is likely that under ComEd's proposal, the Commission would be allowing data resulting from trades between ComEd and its affiliates, which share corporate interests, to determine the market value. (Id. at 18)

According to NewEnergy, the Commission cannot ignore the possibility that price manipulation can occur from sources other than the utility. NewEnergy says that few trades, transacted by few players, occur in these markets, and virtually anyone with sufficient financial means who is interested in the price of power and energy in the ComEd service territory would have the ability to manipulate price, since virtually every trade can affect the price. NewEnergy contends that any authorized trader may be able to manipulate electronic prices with the requisite intent, capital, and some consideration of the size of the market. (Id.)

ComEd's use of bids and offers, NewEnergy asserts, merely exacerbates the potential for manipulation. According to NewEnergy, the use of bids and offers to determine value in other markets is the exception; whereas under the ComEd model it is the rule. NewEnergy states that ComEd, its affiliates or any traders would not even have to consummate transactions to influence the market values. (Id. at 18-19)

NewEnergy states that Altrade and Bloomberg will not allow information to be released to a third party, so this "blackbox" upon which so much of the determination of market value rests is impenetrable to a third party. NewEnergy says that it is not possible for third parties to even monitor activity on these systems unless they pay the cost of becoming subscribers. NewEnergy contends this lack of a public check requires that the Commission be even more diligent in taking proactive steps to prevent manipulation. According to NewEnergy, the Commission must exercise extreme caution with regard to the potential for market manipulation when unregulated exchanges are utilized, in that the utility is the primary source of market data (i.e., setting its own market index), and the public cannot review the utility's actions. (Id.)

According to NewEnergy, ComEd suggests that because no one has been "caught" manipulating the market, the Commission should approve a process that can obviously be manipulated. NewEnergy argues that the integrity of the process dictates that it is necessary for the Commission to establish additional safeguards. NewEnergy says the markets represented by Altrade and Bloomberg appear to be more thinly traded than the Cinergy index that the Commission rejected last summer. (NewEnergy reply brief at 18-19)

NewEnergy asserts that a very small percentage of the "observations" during the May 25, 2000 to June 22, 2000 period were actual transactions. NewEnergy states that ComEd was a party to many of the bids and offers during that period. According to NewEnergy, ComEd's proposed "safeguards" are inadequate to alleviate the concerns over the potential for market manipulation by use of bids and offers. NewEnergy says there is a clear conflict of interest inherent in any situation where a party with interests at issue in the market is responsible for setting market prices. Based upon the purported lack of liquidity and transparency, risks for price manipulation, the possibility that other electronic platforms will prove more viable than those chosen, and all the other short-comings of the Altrade and Bloomberg trading systems, NewEnergy recommends that the Commission limit the effectiveness of any Market-Index tariffs to only one year. (NewEnergy reply brief at 19-22) NewEnergy requests that the Commission ensure that manipulation of the markets does not occur by retaining jurisdiction over the market value tariffs to determine whether better solutions develop as deregulation continues. (NewEnergy brief at 20)

NewEnergy supports what it refers to as Staff's recommendation for Commission oversight through audits at each new computation of the index. NewEnergy also recommends that any auditing process and procedure be continually reviewed or updated by the Commission to keep pace with the sophistication of the markets and indices. NewEnergy suggests that only time will tell if such indexes or trading platforms will ever develop beyond current levels or even survive. NewEnergy says that Altrade and Bloomberg are only two of many such trading platforms. (NewEnergy brief at 19-20)

According to **IIEC**, the IP proposal is flawed in five major areas: thinness of the market being used for calculation of market value; potential for manipulation of the market due to the thinness and the methodology being employed; the unregulated nature of the internet-based markets being used as the market; the problems connected with customer access to trading and price information in these markets; and potential for basis miscalculation and instability. (IIEC Ex. 1 at 4) IIEC asserts that the ComEd proposal suffers from all of the flaws above, except as to the "potential for basis miscalculation and instability." (IIEC Ex. 1 at 11; IIEC brief at 13-14) IIEC also argues that removal of the Into ComEd screen from the Bloomberg exchange due to the lack of trading activity only increases concerns about potential manipulation due to thinness. (IIEC reply brief at 27; IIEC brief on exceptions at 16-17)

In IIEC's judgment, the markets considered by both IP and ComEd operate with little volume. IIEC witness Dr. Bowyer testified that in a low volume market where there are few trades, there exists the strong possibility of price manipulation. IIEC says this means a utility or any other entity may be able to strongly influence the market price. (IIEC Ex. 1 at 5, IIEC brief at 14)

IIEC argues that the record in this proceeding, in respect to the potential for manipulation, is virtually no different than the record in Docket 99-0171. IIEC claims that there is no "robust level of trading" in either the Into ComEd or Into Cinergy markets. IIEC says that the number of trades remains de minimus. IIEC asserts that there still remains a thinly traded market in the Into Cinergy and especially the Into ComEd, which undeniably increases the possibility of market manipulation. (Id. at 15)

IIEC states that while it is true that some unregulated markets are very competitive and that the price reflected in those markets are competitive, these unregulated markets require a great number of participants, all with access to the information and who are able to trade. IIEC argues that it is the transparency in a market that allows it to be self-regulated and that there is no transparency in the market for power and energy. (Id.)

IIEC says that it sees very little difference in the proposals herein from those offered by the utilities in 1999 during the course of their delivery service tariff proceedings, and the approaches promoted by ComEd in Docket 99-0171 and most recently in Docket 00-0259. IIEC asserts that the manner and means by which the information or data that will be used to determine the market value is ripe for bias and manipulation. (Id. at 19)

IIEC says that under the IP and ComEd approaches, there exists the possibility on-peak market value would not be based on the price of an actual transaction, but instead purely on bid and ask prices, which do not represent actual transactions or trades. IIEC claims that one party, a utility such as ComEd or IP, can generate a significant number of bid and ask prices and substantially influence market value, under the proposed methodology. (Id. at 20)

According to IIEC, the ComEd forward market and ComEd's reliance on bid and ask prices, as opposed to actual trades, will enhance the potential for manipulation. IIEC asserts there is no evidence to suggest that the average bid and ask quotes are representative of the relevant market. IIEC also claims the use of bid and offers is the exception, not the rule, in U.S markets, but in the ComEd methodology, it is the rule. IIEC also argues that bid and offers are normally used at the close of trading to resolve incomplete transactions which is different from using them to determine an overall market value for a market where there is virtually no trading. According to IIEC, in markets in which they were used, there was substantial volume and liquidity, unlike the situation on the ComEd hub. (IIEC reply brief at 17)

IIEC asserts that the danger of manipulation exists in both the IP and ComEd proposals due to the thinness of both markets, especially in the Into ComEd market which is dominated by ComEd. (IIEC brief at 21)

IIEC claims that a few contracts may influence the market value under the IP proposal, as well. IIEC says that under the IP proposal, when actual trades do not exist in the Bloomberg historical data base or in Power Markets Week, IP will determine market value on a monthly basis using twice a day "snapshots" from the Altrade market, during a two hour window over a ten day period. IIEC states that in spite of its sometimes reliance on bid and ask quotes, IP agreed actual trade data were a better representation of the market's perception of value. (Id.)

According to IIEC, ComEd offered that the Commission can verify the accuracy of the bid and ask data through an audit. IIEC says that ComEd's response is not satisfactory. IIEC claims that the price data cannot be independently audited by the Commission unless it has a subscription to the relevant data services. IIEC states that the Commission cannot verify the information held by Altrade and Bloomberg because those entities have contracts with the market participants which prohibit them from sharing information with others, including the Commission. IIEC says that only the registered traders are able to access the information. IIEC contends that even if the Commission had access to these services, it would not be able to verify the bid and offer prices used by the utilities unless it happened to take screen prints at exactly the same instants as ComEd and IP, as those bids and offers are subject to change at any time.

IIEC says that offers of "audits" to determine if IP or ComEd correctly reported the numbers from a given screen print add no significant comfort for customers. What is required, according to IIEC, is transparency of and access to the complete data and, given the position of the utilities that Altrade and Bloomberg will not provide such access to the Staff or customers, there is little protection in the offer of an audit. IIEC contends such an audit would merely establish that the utilities reported the numbers they showed the Staff correctly. (IIEC reply brief at 20-21)

IIEC asserts that the audit proposed by IP does not address the issue of potential market manipulation. IIEC claims that if a utility has a preference for one set of prices, it theoretically could take a screen print every minute during the sample window, pick the one it likes best, discard the others and provide what appears as a legitimate audit trail. IIEC also argues that an artificial bid or offer could be posted, snapshot taken, and immediately withdrawn, with little risk of financial consequences. (IIEC reply brief at 21)

IIEC also expresses the additional concern that the Altrade and Bloomberg exchanges recommended by the utilities in this proceeding are unregulated by federal securities regulators, such as the Securities and Exchange Commission and Commodities Futures Trading Commission. IIEC states that these internet exchange/for profit entities are not subject to any governmental agencies' scrutiny or any internal rules and procedures, with regard to data assimilation, posting requirements, etc. According to IIEC, this sort of free enterprise venture only serves to undermine the public's confidence in the process. (IIEC brief at 23)

In response to ComEd and IP arguments that the unregulated status of Altrade and Bloomberg should not be a concern, IIEC claims that it is the transparency of an unregulated market which enables the many participants to self-regulate the market. IIEC contends it is that transparency which simply does not exist with regard to the ComEd and IP proposals. Until and unless it does, IIEC argues the unregulated nature of Altrade and Bloomberg is and should be of concern to customers and it should be a concern to this Commission. (IIEC reply brief at 21-22)

IIEC believes that IP's argument that there are adequate legal remedies available to prevent manipulation is equally unpersuasive. IIEC argues that customers and utilities should be able to rely on that rate without resorting to alternative legal forums to enforce elements of the rate because the fundamental structure of the market value index methodology failed to consider the potential for market manipulation in the thin markets represented by Altrade and Bloomberg in this proceeding. (IIEC reply brief at 22-23)

IIEC posited a solution, which basically calls for removing the utility from the data collection process. IIEC recommended a third party, such as the Illinois Commerce Commission Staff or a private individual or entity with expertise in these matters, to perform the data collection function. IIEC added that any such entity or person would need to subscribe to the data services in order to enhance public confidence. (IIEC Ex. 1 at 7; IIEC brief at 23)

IIEC notes that ComEd claims to have implemented guidelines that limit interaction between clerks taking screen prints and traders. ComEd states the clerk will have no knowledge of prices or positions in the market and the traders will not know exactly when screen prints are to be taken. IIEC indicates that its witness, Dr. Bowyer, testified that the presence of these protections did not change her opinion on the possibility of manipulation. (Tr. 190) IIEC asserts that whether or not the protections lessen the ability to manipulate depends on the effectiveness of the firewall between the trading desk and the person collecting the data.

IIEC argues that to the extent the Commission would accept the IP or ComEd proposal, at the very least the Commission should require a procedure that removes the utility from the data collection process. IIEC says that this could best be effected by placing the onus for securing monitoring access to Altrade and Bloomberg for Staff (or other third party) on the petitioning utilities. IIEC suggests that if Altrade will not accommodate such a request from ComEd, the primary trader of one of Altrade's key products, this draws into serious question the motives of the provider and the validity of the entire electronic exchange approach. (IIEC brief at 24; IIEC brief on exceptions at 16 and 18-19)

Public confidence in the market value process, IIEC asserts, is undermined by the barriers to customers and others who desire access to the data by which these market values are being determined. (Id.) IIEC witness Bowyer testified that it is currently not possible for a non-trader in power to view the Altrade screens in real time or even publicly disseminate the screen prints generated by IP on a twice daily basis for a 10 day period each month, as the data is considered proprietary. (IIEC Ex. 1 at 9) IIEC adds that not only was ComEd unable to provide the observations but, for example, it could not provide the size or quantity of each transaction observed for Applicable Period A. (IIEC brief at 24)

According to IIEC, markets can work only when there is a belief it is not being undermined by other market participants and outside forces. IIEC claims that without assurances the calculated market value is derived in a manner independent of any market participant's undue influence, customers and some traders will naturally be leery of participating. (IIEC brief at 27)

IIEC says IP argues that transparency and access are no problem because (1) most trading desks are likely to have access to both Altrade and Bloomberg; (2) some IIEC company has an affiliate which is a power marketer; and (3) IP will allow an audit, subject to restrictions imposed by Altrade and Bloomberg, to establish that IP correctly published the values it obtained from Altrade and Bloomberg. (IIEC reply brief at 19) In response, IIEC contends that one must be a power trader to obtain access to the Altrade and Bloomberg data, even if one were willing to pay the necessary fees. According to IIEC, it can be safely assumed that the vast majority of IP residential, commercial and industrial customers do not have "trading desks" for electricity. IIEC also argues that the fact an IIEC company may have a power marketing affiliate is not definitive proof that such a company has access to Altrade and Bloomberg, much less that all or most or many utility customers have such access. (IIEC reply brief at 19-20)

In response to ComEd, IIEC states that while it is true, as ComEd suggests, that no party has presented direct evidence of manipulation, it is the potential for manipulation which should be of concern to the Commission. IIEC asserts that it was the potential for market manipulation that caused, in part, the Commission to reject the use of the Cinergy/NYMEX futures market in Docket 99-0171. IIEC also expressed concern that even if the Commission ultimately concluded that manipulation was occurring, a utility might argue that the Commission was without the authority to modify the utility's MVI tariff to address that concern. (IIEC reply brief at 14-15)

IIEC also asserts that because the shape and scope of the market are still in a great state of flux, it is difficult to accept ComEd's representation that market manipulation would simply be too costly. IIEC contends that given the minimum size of the transactions necessary on the Into ComEd Altrade and Bloomberg exchanges, the size of the sales for resale market in ComEd, the minimum number of transactions reported by Altrade and Bloomberg for Into ComEd, and the fact that ComEd constituted the vast majority of bid and offers, it does not seem totally improbable that ComEd could have the opportunity to manipulate the market price if it saw that it would be to its economic advantage to do so. (IIEC reply brief at 16)

In response to comments by ComEd that Altrade and Bloomberg have no economic incentive to incorrectly report the data they collect, IIEC asserts that this does not mean that the data itself is valid or free from manipulation by the very few market participants who are the source of the data reported.

From a legal standpoint, IIEC also argues that "options or future contract or contracts" are not the same as bid and ask offers. IIEC further asserts that bid and ask offers are not "contract or contracts." Therefore, IIEC concludes that as a matter of law, a market value index that relies upon bid and ask offers to determine the market value, is legally deficient. (Id. at 22-23; IIEC brief on exceptions at 13-14)

Staff asserts that the Into Cinergy market is less likely, than is the Into ComEd market, to be influenced or manipulated by ComEd's own bidding and trading behavior. (Staff brief at 22)

On this issue, Staff witness Zuraski expressed concern about the liquidity and size of the Into ComEd market. He testified that the Into ComEd market is not as heavily traded as the Into Cinergy market, particularly on the Altrade and Bloomberg Powermatch electronic trading platforms. (Staff Ex. 3.0 at 25) Mr. Zuraski also expressed concern about the predominance of bids and asks as opposed to actual trades in the Into ComEd forward market. He suggested that an actual trade is more likely than a bid/ask midpoint to represent a meeting of the minds between independent buyers and sellers.

Mr. Zuraski states, concerning the Into ComEd forward market data from Altrade and Bloomberg, that ComEd itself appears to dominate that market. He asserts that ComEd, in effect, manufactured the on-peak forward price data upon which its first Applicable Period A index was based. Mr. Zuraski claims that is also the case with ComEd's recent information filing for Applicable Period B. (Staff Ex. 3.0 at 26)

Mr. Zuraski states that there is a significant difference between the liquidity of the forward markets and the spot market for electric power, with much less forward market activity being recorded. He asserts that the low liquidity in the forward markets may well lead to a greater chance that the incumbent utility could exercise significant control over the level of forward prices that are seen in the incumbent's local arena. Mr. Zuraski suggests that relying instead on forward price data from a neighboring market avoids some of the risk that the utility would be able to control its own market index used in the computation of its own transition charges. (Staff Ex. 3.0 at 27)

Staff claims that ComEd attempts to trivialize its overwhelming presence on Altrade and Bloomberg Powermatch for Into-ComEd power products. Staff contends that manipulation is neither costly nor difficult for ComEd when dealing with the Into ComEd market where ComEd continues to dominate the market. Staff claims it would certainly be a profitable tradeoff for ComEd to take a small loss on the physical sale of a few megawatt-hours ("MWh") in order to prevent a much larger financial loss due to millions of MWhs of load shifting to delivery services. Staff asserts that on Altrade and Bloomberg Powermatch, ComEd can protect itself against such potential small losses by merely "turning off" parties to whom ComEd does not want to sell power. (Staff reply brief at 3-4)

Staff says that ComEd can offer to buy at extremely low prices. According to Staff, here there is no risk of losses to ComEd because if a seller accepted ComEd's low bid, ComEd would have the best of both worlds: (1) ComEd would have acquired some small amount of power at low cost and (2) ComEd would have raised transition charges. (Staff reply brief at 3-4)

Staff asserts that the motive to manipulate the market is both clear and well-known; it is to depress the market value and raise the transition charge. Staff says it is supportive of ComEd's proposals for various safeguards against manipulation, but Staff questions the feasibility and effectiveness of some of these proposed safeguards. Staff says the evidence has failed to identify a neutral third party that will be able to gain direct access to Altrade and Bloomberg Powermatch. Staff does not view auditing as a substitute for using the Into Cinergy observations. (Staff reply brief at 5)

The AG states that the Into Cinergy market has at least three Illinois utilities trading for power and energy, and therefore cannot be dominated in the same manner that ComEd dominates the Into ComEd market. The AG asserts that Into Cinergy's greater size, and presumably greater trading diversity, creates a market that cannot be indirectly manipulated by any single, large participant. The AG contends that the Into Cinergy market is more heavily traded than the Into ComEd market. (AG brief at 11)

The AG asserts that Altrade and Bloomberg data is not publicly available. The AG suggests that an independent third party could compile the data from Altrade and Bloomberg, use that data to calculate the MV for electric power and energy and provide those values to the utilities. The AG says this independent third party would, in essence, replace the NFF and, as with the current NFF, the utilities could fund this process. (AG brief at 12-13)

In response to ComEd's claim that manipulation is unlikely and that such concerns are speculative, the AG says the possibility of manipulating the Into-ComEd market does exist, and the potential chilling effect it could have on competition is very real. According to the AG, there is no need to use a market hub (i.e., Into-ComEd) that could be subjected to the undo influence that ComEd could bring to bear, when a superior alternative (i.e., Into-Cinergy) is available. The AG argues that regardless of ComEd's assertions, the number of actual daily trades clearly indicates that the Into-ComEd market is not sufficiently liquid to support its use in determining the market value in ComEd's service area. (AG brief at 3-4)

The AG reports that ComEd proposed to limit interaction between ComEd traders and clerks taking screen prints. According to the AG, while limiting interaction was intended to alleviate manipulation concerns, the appearance of impropriety is still present. The AG states that given ComEd's acquiescence to a third party collector, the use of a third party for raw data collection would better address the appearance of impropriety issue. (AG reply brief at 4-5)

In its reply brief, **PE Services** states that laws provide appropriate sanctions to parties that engage in price fixing and market manipulation. PE Services asserts that because ComEd has agreed to oversight and the Into-ComEd market increased liquidity has reduced thinness and ComEd has adopted safeguards based on parties' concerns, the rationale that other parties have offered for requiring Into-Cinergy for the ComEd territory currently lack merit. PE Services prefers the neutral third party approach propounded by the AG but, in the alternative, would support the Staff audit methodology. (PE Services reply brief at 10)

C. Data Hierarchies

In this proceeding, Ameren, ComEd and IP have each sought similar but not identical procedures for selecting among the various on-peak price data. That is, they each have different procedures for when observations are made, when bids and asks are used, when actual trade prices are used, and how to combine the various observations to arrive at each month's on-peak price input. These procedures for arriving at each month's on-peak price are known as the "data hierarchies."

ComEd states that because of the amount of available data, ComEd developed a "data hierarchy" to determine the best data to use for transactions on a particular day. According to ComEd, this hierarchy was refined throughout the proceeding in response to testimony from Staff. ComEd asserts that its hierarchy establishes the best "snapshot" value for transactions and bid/offer midpoints, and has three basic principles: (1) individual monthly values for either transactions or bid/offer midpoints will be used when available; (2) individual monthly values will be back-calculated from summary month information when possible; and (3) when no individual monthly data are available, the summary month information will be used for all those individual months covered by the summary contract. ComEd reports that under its proposal, after establishing the array of daily values for each contract month, the utilized daily value will be selected with preference given first to weighted trades, then to last trades, and finally to bid/offer midpoints. ComEd indicates that Staff's witness testified that this revised hierarchy was reasonable and acceptable. (ComEd brief at 17-18)

As previously discussed with regard to the manipulation issue, ComEd argues that NewEnergy's proposal to utilize only "offer" prices in certain circumstances, rather than the bid-offer midpoint as proposed by ComEd, is an obvious attempt to create artificially inflated market values. NewEnergy's reasons for its proposal are discussed below. ComEd asserts that the offer price does not represent a price at which anyone can sell or has sold electricity; rather, it is the price at which someone is willing to sell electricity. ComEd says if there is not a transaction, then by definition the offer price is higher than the price at which someone could sell electricity. ComEd contends that the only way to ensure that an accurate market price is captured is to take the midpoint of the bid-offer, so that neither side of the equation has the potential to be manipulated. (ComEd reply brief at 23; brief on exceptions at 5-7)

Ameren's proposed data hierarchy for Altrade is (1) the afternoon weighted average price of that day's trades, (2) morning weighted average price of that day's trades, (3) afternoon last trade price, (4) morning last trade price, and (5) the simple average of midpoints from available paired bids and offers from the morning and afternoon data captures. For Bloomberg PowerMatch, Ameren's proposed daily hierarchy is: (1) afternoon last trade price, (2) morning last trade price, and (3) the simple average of midpoints from available paired bids and offers from the morning and afternoon data captures. (Ameren Ex. 2.0 at 8)

Illinois Power, in selecting data from the available sources, proposes to use actual trades (as opposed to bid-offer averages) whenever an actual trade is available for the contract month at issue. IP states that where multiple trades occur for the month at issue, they are averaged (and where possible, weighted averaged by volume). IP says that when only one trade is reported, then it will be used. IP adds that only if no trades are reported throughout the entire snapshot period will bid-offer averages be used. (IP Ex. 2.1 at 8-9) IP reports that because of concerns when a single trade occurs for a particular contract, some have suggested that IP be open to using more bid-offer averages. IP claims, however, that no one has suggested IP's proposal should be rejected due to hierarchy concerns. (IP brief at 14)

IP says that its proposed hierarchy focuses on actual trades because an actual trade clearly demonstrates a level at which agreement was reached on value, whereas the bid/offer represents a range in which one would expect to see eventual agreement. IP asserts that others concur in this assessment. IP contends that with actual trades displacing bid-offer averages, it will be harder for someone to attempt to manipulate the market price. IP believes its proposed hierarchy should be adopted. (Id.)

IP states that one concern with using bid-offer averages is the fear that they may be manipulated. IP asserts that concerns of manipulation are less of an issue when an Into-Cinergy index is used. IP indicates that it can understand the concerns of having a single contract trump a larger number of bid-offer averages. Therefore, IP states that if there is sufficient support for a change that incorporates more bid-offer averages, IP would be willing to consider adopting that modification, depending on the exact details of the modification. (Id. at 14-15)

IP says that it is open to modifying its proposal on this point if a consensus emerges. In the absence of such a consensus, IP believes its proposed approach strikes an appropriate balance and should be adopted. (IP reply brief at 15)

As discussed below, in NewEnergy's brief on exceptions, it proposed that the utilities modify their data hierarchy for establishing off-peak prices. IP asserts that NewEnergy's basis for modifying the off-peak data hierarchy relies on an argument that is specific to ComEd and has no bearing on IP's proposal. (IP reply brief on exceptions at 5) According to IP, the request by NewEnergy that utilities include their own off-peak trades, if any, raises more questions than it answers. IP asserts that NewEnergy's "new-found" solution is ill-defined and should be rejected. (Id. at 6)

NewEnergy states that since so few trades occur in the Altrade and Bloomberg platforms, there will be times when no actual transactions are recorded. To cover this contingency, NewEnergy says each of the three utility proposals contains a provision whereby hierarchies would be determined using the midpoint of the paired bids and offers for a given time of day. NewEnergy asserts that the Commission should be concerned about manipulation when there is no actual transaction that occurs. NewEnergy argues that because this bid-offer midpoint methodology uses "artificial" numbers that do not represent actual activity in the marketplace, and thus relies on numbers with only a presumption of validity, the Commission should have additional concerns regarding potential price manipulation at this level of the data hierarchy. (NewEnergy brief at 20)

NewEnergy reports that ComEd's proposal provides equal weighting to both an offer to buy and an offer to sell. NewEnergy argues that such an approach ignores: (i) the ability of ComEd to manipulate the Altrade and Bloomberg electronic exchanges;

(ii) the absence of evidence describing ComEd's actual transactions at this time, and (iii) the fact that ComEd is virtually the sole poster of bids and offers. NewEnergy contends that ComEd's proposal overemphasizes the price at which ComEd is willing to buy power and energy, and materially ignores the plain language of the Act. According to NewEnergy, the important consideration is the price at which ComEd, the utility and virtually the lone poster, is willing to sell power and energy; given the current market dynamics, NewEnergy claims this is more likely to represent the price at which customers can buy power and energy. As a result, NewEnergy recommends the use of offers, rather than the midpoint of bids and offers, absent any actual transactions. (NewEnergy brief at 21; reply brief at 22-23)

On this issue, NewEnergy witnesses O'Connor and Bramschreiber assert that the use of the bid/offer midpoint must be used with extreme caution when there are few active market participants or when a single market participant can exert great influence over the bid/offer midpoint. They claim that at present, almost no actual transactions occur, and ComEd itself is virtually the only entity posting bids and offers. They further assert that the Altrade and Bloomberg electronic exchanges allow participants to select with whom they will and will not trade, as well as to "post-and-pull" at their own discretion. Messrs. O'Connor and Bramschreiber contend that when this ability to selectively post data is coupled with ComEd's ability to determine the exact time for capturing its daily data, ample opportunity exists for ComEd to exert great influence over the bid/offer midpoint. (NewEnergy Ex. 2.0 at 8)

NewEnergy claims that its proposed modification would result in the market index actually reflecting the price at which ComEd is willing to sell power and energy and the price at which retail customers in its service area can buy power and energy. According to NewEnergy, this change is appropriate because, if for no other reason, the Act requires that the market value apply to the power and energy the utility sells, not what the utility buys. (NewEnergy brief at 22)

NewEnergy asserts that ComEd's proposal overemphasizes the price at which ComEd is willing to buy power and energy. According to NewEnergy, the important consideration is the price at which ComEd is willing to sell power and energy; given the current market dynamics, NewEnergy claims this is more likely to represent the price at which customers can buy power and energy. (NewEnergy reply brief at 23-24)

NewEnergy indicates that in the future, if and when there is more liquidity at the ComEd trading hub and the number of participants increase dramatically, NewEnergy would not oppose the use of the midpoint of bids and offers in ComEd's market index methodology. In fact, for IP and Ameren, NewEnergy says it supports the use of midpoint of bids and offers, in the absence of actual transactions, for the more liquid and actively traded Into Cinergy forward market. (NewEnergy brief at 22; reply brief at 24)

In its brief on exceptions, NewEnergy asserts that when available, data from actual transactions conducted by the utility should be placed at the top of the data hierarchy when establishing off-peak market value. NewEnergy claims that such data is directly applicable to the utility service territory and prospective in nature, and therefore applies to the geographic area and the periods of time included within the pricing periods in the MVI tariff. (NewEnergy brief on exceptions, Attachment A at 9)

As previously mentioned, **IIEC** takes issue with ComEd's suggestion that bid and offer midpoints are routinely used in markets in the US and around the world. IIEC claims that in such markets, the use of bid and offers is the exception, not the rule. IIEC also argues that bid and offers are normally used at the close of trading to resolve incomplete transactions. According to IIEC, in markets in which they were used, there was substantial volume and liquidity, unlike the situation on the ComEd hub. (IIEC reply brief at 17)

Staff says that each of the three utilities proposed similar but not identical procedures for when observations are made, when bids and asks are used, when actual trade prices are used, and how to combine the various observations to arrive at each month's on-peak price input. (Staff brief at 51-52)

Staff indicates that ComEd revised its proposed data hierarchy in this proceeding. Staff agreed in part with the proposed revisions but disagreed to the extent that the proposal would actually end up discarding just as much data as is gained. In response, ComEd presented another alternative to address Staff's concerns, while preserving the use of both individual month contracts and multi-month composite contracts. Staff indicates that this second revised hierarchy proposed by ComEd was reasonable and should be approved. In response to a question at the hearing, Mr. Zuraski indicated that ComEd's second revised hierarchy would be reasonable for both ComEd and Ameren. (Id. at 52-53, citing Tr. 696-697)

Staff states that IP agreed to change its hierarchy in regard to the inclusion of bid/offer data for contracts in which actual trades occur. Specifically, Staff asserts, IP agreed that the original methodology as proposed could allow a single transaction to override other bid/offer representations that may have existed, but reiterated that as an executed transaction, it clearly demonstrates a level at which agreement was reached on value, whereas the bid/offer represents a range in which one would expect to see eventual agreement. (Id. at 54-55)

Staff states that it is willing to support the enhanced filtering of bid/ask data proposed by IP or, alternatively, the use of the less aggressive filtering of bid/ask data proposed by Ameren and ComEd. According to Staff, the record evidence does not clearly establish the better method in this regard. (Id. at 55)

In response to the NewEnergy proposal to use offer prices (i.e. asking prices), rather than the midpoints of bid and offer prices, Staff says that utilities should be encouraged but not required, as a condition for approval of the utilities' market index tariffs, to use only offer prices rather than the midpoint of bids and offers. (Id. at 45) Staff indicates that it shares NewEnergy's concern about ComEd's influence over the Into-ComEd trading on Altrade and Bloomberg Powermatch. According to Staff, such concern lead it to recommend that ComEd's index be based upon Into-Cinergy forward market observations and not on Into-ComEd forward market prices. Staff argues that relying on Into-Cinergy forward market observations also will result in less reliance on bid/ask data, due to the greater preponderance of actual trades in the Into-Cinergy forwards versus the Into-ComEd forwards. (Id. 45-46)

In response to IIEC's suggestion that bids and offers do not meet the statutory requirements, Staff says that in its opinion, all of the utilities have proposed to utilize observations of exchange traded or other market traded contracts for electric power and energy, within the meaning and scope of the statute. Staff indicates that the Act does not define an "index," but asserts it is well within reason to refer to the day-ahead off-peak surveys of prices as market traded index contracts, just as it is well within reason to refer to the forward on-peak data source as either market traded indexes or even market traded futures. (Staff reply brief at 8-9)

With respect to IIEC's claim that bids and offers are not contracts, Staff contends that this claim is equally true (or equally misleading) as saying that agreed-upon trade prices are not contracts. Staff asserts that bids and asks and agreed-upon trade prices are all observed measures of the value of contracts; they are not contracts, per se. Furthermore, Staff says that if the legislature was so "dead set" on using agreed-upon trade prices, it could just say so. Staff asserts that the legislature did not require use of agreed-upon trade prices, but instead deferred to the Commission's expertise and discretion the details of how to cull market value information from the electricity marketplace. According to Staff, the Commission is free to weigh the pros and cons of relying to some degree on bid and ask midpoints in lieu of more scarce agreed-upon trade price data. (Staff reply brief at 9)

The AG believes that the market value data collection hierarchy approved by the Commission should provide for the collection of the maximum amount of market data. The AG contends that there is a legitimate concern regarding the thinness of both the Into-Cinergy and Into-ComEd markets. The AG asserts that because of that thinness, the number of actual trades may not supply sufficient data to accurately determine the market value of electric power and energy. The AG states that prudence dictates the use of bid/offer midpoints where needed to supplement actual trades. (AG brief at 15)

Notwithstanding the potential usefulness of bid/offer midpoints, the AG believes that actual trades are a better representation of the market value of electric power and energy than are bid/offer midpoints. Therefore, the AG recommends that a market value data collection hierarchy that gives preference to actual transactions over bid/offer midpoints should be adopted by the Commission. (Id.)

The AG reports that ComEd proposed a revision to ComEd's data collection hierarchy that gives preference " . . . first to weighted trades, then to last trades, and finally to bid/offer midpoints." The AG asserts that this revised hierarchy gives the proper preference to collected data. (Id.)

The AG believes that the Commission should adopt ComEd's revised hierarchy as the standard for all utilities in selecting data for use in determining the market value of electric power and energy in Illinois. In the alternative, the AG maintains that any data collection hierarchy adopted by the Commission should adhere to the standards that gives preference to actual transactions over bid/offer midpoints. (Id.)

D. Basis Adjustment

Locational or geographic "basis" represents the differences in prices of the same product from one location to another. Basis adjustments are intended to adjust for these price differences attributable to location.

ComEd states that because its proposal utilizes the Into ComEd hub, which reflects the price for electricity bought and sold in the ComEd service territory, a basis adjustment is neither necessary nor appropriate. ComEd argues that one advantage of utilizing the Into ComEd price is that the issue of a basis differential does not need to be addressed. According to ComEd, even if the Commission were to propose that ComEd utilize data from the Into Cinergy hub, no basis differential should be added to the Cinergy values because of the extremely close correlation between prices at these hubs. (ComEd brief at 17; reply brief at 24)

While **Ameren** used an additive method, Staff witness Christ outlined a multiplicative method for determining basis adjustment. According to Ameren, in most months, the difference in basis adjustments calculated using the additive method employed by Ameren as opposed to the multiplicative method is de minimus. Ameren states that based on Mr. Christ's figures, the average difference between the methods was a $2.42 premium to the additive method, or roughly 4% of the average underlying Cinergy forward price of $60.89. Ameren indicates that it prefers the additive method; however, Ameren will not object if the Commission requires use of the multiplicative method to achieve uniformity. (Ameren brief at 9)

According to **Illinois Power**, Staff performed a rigorous and thorough analysis of various possible basis adjustments. IP indicates that Staff found that the best basis adjustment, among those examined, is a multiplicative basis adjustment applied to monthly Into-Cinergy forward on-peak prices. IP states that this is exactly what it proposed. IP argues that because no party seriously challenges IP's basis methodology and because Staff's analysis has found it the best, IP's basis adjustment should be approved as proposed. (IP brief at 13)

IP says IIEC criticizes IP's basis adjustment purely because IP did not place into the record reams of data regarding its proposed methodology. (IIEC brief at 25-26) According to IP, this criticism elevates form over substance and ignores the simple fact that IP's approach is the best one if any basis adjustment is to be chosen. (IP reply brief at 14)

According to IP, Unicom's argument that the Ameren and IP basis adjustments should yield similar results will of course be resolved if the same methodology (using the same data and covering the same period) is adopted as recommended by Staff. IP claims that absent that, there is no theoretical reason (and Unicom offers no empirical one) for the two to yield identical results. (Id.)

In response to IIEC's criticism that IP does not update the basis adjustment more frequently, IP describes this as an instance where IP chose one of several possible methodologies based, in part, in an attempt to balance the needs of all parties. IP claims it attempted to avoid more frequent updates of items that are likely to be stable over long periods. IP says that if there is a consensus with more frequent updates (and thus far there is not), it would be willing to re-calculate the basis adjustment every month along with its market values. (Id.)

Staff witness Christ examined the differences between the Ameren approach and the IP approach toward adjusting for geographical basis differences between Lower MAIN and Cinergy. (Staff Ex. 4.0) According to Staff, the most fundamental difference is that Ameren proposes to make an "additive" adjustment, while IP proposes to make a "multiplicative" adjustment. Staff indicates that Mr. Christ also examined other possible approaches and modifications to the utility-proposed approaches. Staff states that he performed tests to determine which approach outperforms the others. (Staff brief at 23-24)

Staff reports that the result of Mr. Christ's analysis was, on balance, inconclusive. Staff states that Mr. Christ did not recommend that any Illinois utility make basis adjustments in order to estimate the on-peak forward prices in the electric market in which they "operate." Mr. Christ concluded that if a basis adjustment were to be made, the "best" basis adjustment, among the four he examined, is the mutiplicative basis adjustment. (Id. at 26)

Staff recommends that the Commission condition approval of all three utilities' market index tariffs on the use of Into-Cinergy on-peak forward price data, with either no basis adjustment or with a basis adjustment methodology that relies on a "multiplicative" approach, analogous to the approach proposed by IP. (Id. at 28)

IIEC responds to IP's comment that the basis adjustment is "equal to the quotient resulting from the division of values for the daily on-peak lower MAIN energy price by the values for the daily On-peak Into Cinergy Energy Price for each of the 12-month contracts." According to IIEC, however, IP has offered no example or provided any data that would demonstrate how the adjustment would be developed, and why it is appropriate. (IIEC brief at 27-28)

IIEC argues that because the adjustment is only made once a year, any changes in the course of the year will not be reflected in the market value calculation as it is determined throughout the year. (IIEC Ex. 1 at 10) IIEC contends that it is fairly certain that throughout the course of the year, the IP market and the Into Cinergy markets will change, simply as a function of the newness of the internet-based markets and the current lack of liquidity. (IIEC brief at 27-28)

According to **NewEnergy**, some adjustment or recognition between trading hub locations is warranted for the IP and Ameren market index proposals which rely on the Into Cinergy on-peak forward market. As a result, NewEnergy supports Staff witness Christ's multiplicative basis adjustment as outlined in his direct testimony. NewEnergy states that no basis adjustment is needed for the ComEd proposed method, which has relied upon the geographically relevant Into ComEd on-peak forward market. (NewEnergy brief at 20; reply brief at 22)

The AG says Staff witness Christ concluded that a basis adjustment was not necessary. The AG claims that the utilities failed to offer any persuasive evidence to the contrary. The AG indicates that it supports what it regards as Staff witness Christ's evaluation and recommendation that no basis adjustment is necessary. (AG brief at 14)

According to the AG, without the need for a basis adjustment, ComEd witness Huntowski's claim that "[t]he advantage of utilizing the Into-ComEd [instead of the Into-Cinergy] price is that a basis differential does not have to be estimated", is rendered moot. The AG argues that Staff witness Christ's basis adjustment evaluation eliminates this "advantage" for using the Into-ComEd market. (Id.)

In its briefs on exceptions, the AG asserts that the hearing examiner's proposed order mischaracterized Staff's position and the AG's position, which is based on the Staff recommendation. The AG claims that both it and Staff recommend no basis adjustment is necessary when the Into Cinergy exchange data is used to develop on-peak market values. (AG brief on exceptions at 6-7; BOE on reopening at 3-4) In its reply briefs on exceptions, however, Staff indicates that the hearing examiner's proposed order accurately portrayed Staff's position on this issue. (Staff reply brief on exceptions at 1-2; RBOE on reopening at 1-2)

PE Services states that no basis adjustment is necessary in the ComEd MVI if ComEd utilizes the Into ComEd hub. (PE Services reply brief at 9)

E. Use of Historical Data to Develop Off-Peak Prices

ComEd asserts that because real-time data on forward off-peak and around-the-clock prices are not consistently available at the present time, ComEd's proposal uses historical off-peak prices from Power Markets Week's Daily Price Report published by McGraw Hill for setting the off-peak market values to be used by ComEd. ComEd contends that because historical off-peak price levels tend to be relatively stable over time, historical prices are a good proxy for future off-peak prices; and that the price data from McGraw Hill provides the best available basis for setting off-peak values. According to ComEd, no party has identified a better data source, although some parties, principally NewEnergy as discussed below, have suggested that this data be "adjusted" to increase the prices used to calculate market value credits. (ComEd brief at 18)

According to ComEd, NewEnergy fails to provide sufficient information to support its recommendation, which is described below, that an as-yet-unspecified "broker system" should instead be used to calculate such prices. ComEd claims that NewEnergy's proposal is flawed and that NewEnergy provides no details as to its proposal. According to ComEd, NewEnergy's inability to locate legitimate off-peak quotes only lends further support to the record evidence that such quotes are not consistently available. (ComEd reply brief at 25-26)

Ameren states that under its proposal, market values for off-peak periods will be determined using historical prices as a proxy for forward prices. According to Ameren, there is no applicable off-peak, regularly traded, forward market data, but there is not a significant level of volatility in off-peak prices. Ameren says that historical prices for the daily eight-hour off-peak periods from Monday through Friday for various reliability regions can be obtained from Power Markets Week's Daily Price Report, which lists a range of daily spot market transactions. Ameren indicates that it plans to calculate the midpoint between the minimum and maximum trades for each day with reported prices, and a simple average of the midpoints for those days will be used as the monthly value for the off-peak market price. (Ameren brief at 9)

Ameren reports that Unicom expressed concern that Ameren and IP used the same Southern MAIN off-peak data but reach different results. Ameren claims that the data submitted by both Ameren and IP were intended primarily to demonstrate calculation methods. Ameren asserts that no attempt was made to verify that the same data was being used to demonstrate these methods. Ameren states that it was using data for the twelve months ended December 31, 1999 while IP used data for the twelve months ended approximately May 1, 2000. According to Ameren, this explains the differences for the months of January through April. Ameren asserts that differences in the remaining months are the result of minor variations in the Southern MAIN prices provided by the data sources used by Ameren and IP. (Id. at 9-10)

Ameren contends that while there are differences between the Ameren and IP results, it does not indicate a serious problem. Ameren says that it would agree with Unicom that to the extent possible the utilities should cooperate to ensure that data sources, which are supposed to be identical, actually are identical. (Id. at 10; Ameren reply brief on exceptions at 3)

Illinois Power states that for the off-peak period, its proposal uses historic day-ahead data. IP suggests that while it might be preferable to use forward prices to set the off-peak price, the data do not exist. IP says that historic data is used because off-peak prices have never been as volatile as on-peak prices which have experienced increased volatility in recent years. IP states that no party disagrees with this and the only debate is over whether the historic data should be adjusted to reflect different parties' perceptions of what the historic data represent. (IP brief at 15; reply brief at 15)

IP contends that because more appropriate data do not exist and because off-peak prices are relatively stable, IP's use of historic data to set off-peak prices should be adopted. (Id.)

Unicom reports that each of the utilities intends to use day-ahead spot prices from the prior year to establish off-peak market values. According to Unicom, while both IP and Ameren purport to use the same data source, Lower MAIN prices, they arrive at different results. Unicom says that Ameren explained that the differences, in part, were a result of different samples and different sources of the Lower MAIN data. Unicom says that Ameren agreed that the utilities should use identical data sources, but stopped short of agreeing that the calculated values should be the same. Unicom asserts that neither Ameren nor IP presents any explanation of why identical samples from identical data sources should result in anything other than identical outputs for off-peak market value calculations. Unicom contends that the Commission should recommend changes to the tariff petitions of Ameren and IP to ensure comparable calculations of off-peak market values. (Unicom brief at 3-4) In its brief on exceptions, Unicom recommends that the Commission condition approval of the IP and Ameren tariffs on modifications to those tariffs that will guarantee that the utilities' use the same data to calculate off-peak market values. (Unicom brief on exceptions at 6 and Exhibit A at 125)

In its reply brief on exceptions, IP states that Unicom continues to complain that Ameren and IP reach slightly differing off-peak values. IP argues that the problem is not in the data because the data sources are the same. IP claims that Ameren updates its off-peak values consistent with its period A/B methodology and timing, while IP updates its values once a year using data appropriate to a December reset. IP asserts that there is no reason to believe the two values would be identical. (IP reply brief on exceptions at 6-7)

IIEC argues that the ComEd and IP proposals do not measure the overall wholesale market. IIEC contends they measure, or more precisely sample, submarkets. For on-peak prices, IIEC says these proposals measure the intermediate term, or forward market. For off-peak prices, IIEC asserts they measure the short term or spot market. IIEC claims they completely ignore the long term market, consisting of transactions spanning several months or even years. IIEC says lest one mistakenly believes that the submarkets measured by the utilities, in their market index approaches, are representative of the other submarkets, or that there are no significant differences in price levels, the record establishes that this is not the case. IIEC says that ComEd cannot have it both ways by arguing the difference between spot markets and forward markets on the one hand and suggesting on the other that there is only "one market" for power and energy on the other. (IIEC reply brief at 7-9)

In its brief on exceptions, IIEC states that it does not argue against the use of historical data to develop off-peak prices, per se. IIEC argues that the ComEd and IP proposals do not measure the overall wholesale market. For off-peak prices, IIEC asserts that the ComEd and IP methodologies measure only short term or spot markets. It claims the proposed indices ignore the intermediate term and long term markets and use only the short term or spot market in developing off-peak prices. (IIEC brief on exceptions at 8-9)

NewEnergy's concerns regarding the use of off-peak historical data appear to be related to its proposed adjustment thereto. As a result, NewEnergy's position regarding off-peak data is described below in Section III of this order.

F. Number of Years for which Market Values are Computed

As previously discussed, each of the three utilities propose to establish market values for periods up to one year in advance. Under ComEd's and Ameren's Applicable Periods A and B, customers will know the market value and their transition charge for one year or less. Under IP's proposal, each customers market value and transition charge will be fixed for twelve months.

IIEC claims that the ComEd's and IP's proposed market values are not established for each of the years specified in the NFF process, as required by Section 16-112(a) of the Act. IIEC indicates that the statute provides that if the Commission is to consider an MVI, the tariffs incorporating the MVI must "establish market values for each of the years specified in the neutral fact-finder process described in subsections (b) through (h) of this Section . . . . " (220 ILCS 5/16-112(a)). According to IIEC, Subsection (d) states the NFF shall calculate the market values for the next year and, to the extent the summaries include a sufficient number of actual contracts to represent a viable market for the sale and delivery of electric power and energy in subsequent years, for each of the four succeeding years. (IIEC brief at 32-33)

According to IIEC, there has been no demonstration that the ComEd and IP MVIs establish market values for each year specified by the NFF process. IIEC asserts that having failed to conform to the requirements of Section 16-112(a), the ComEd and IP MVI tariffs are unacceptable. IIEC also says customers need, and are deserving of, all necessary information by which to decide whether to enter into a contract for power and energy. IIEC claims that to the extent the MVI does not incorporate market values determined for multiple years during the transition period, customers are unable to properly evaluate the economics of any multiple year offers. (Id. at 33)

IIEC asserts that no party suggests the tariffs proposed by ComEd or IP establish market values for each of the years specified in Subparagraphs (b) through (h) of Section 16-112. IIEC says IP's approach is actually an admission that IP's tariffs do not establish market value for each of the years set forth in Section 16-112(b) - (h). IIEC claims it is also an indication that even under IP's interpretation of Section 16-112(a), the NFF process will have to continue, even if the market value index approach is adopted in this proceeding. (IIEC reply brief at 3-4)

In its brief on exceptions, IIEC appears to contend that the NFF process is to be used not only in the absence of a market index tariff, but is also to be used when the market index tariff does not establish market values for each of the years specified in subsections (b) through (h) of Section 16-112 of the Act. (IIEC brief on exceptions at 3 and 11) In its reply brief on exceptions, Ameren says IIEC is now apparently contending that the Commission would be obligated to continue use of the NFF, even if the Commission approves the use of the MVI tariffs by the State's three largest utilities. Ameren asserts that this is an issue that need not be addressed in this docket. Ameren argues, and the Commission agrees that IIEC is addressing a question which no one has asked, and one that need not be answered at this time because the statute simply does not require an MVI tariff to establish "out-year" values. (Ameren reply brief on exceptions at 2) Staff, in its reply brief on exceptions, suggests that given the Commission-initiated Docket No. 01-0053 to determine whether the Commission should continue or terminated the NFF, the IIEC recommendation in this regard should be rejected so that the issues raised by IIEC can be addressed in the proper proceeding. (Staff reply brief on exceptions at 3)

ComEd states that the NFF has never published values for more than a one year period, finding, as the NFF was allowed to do under Section 16-112(d), that the data are insufficient to establish such values. ComEd concludes, therefore, that the MVI methodology need not incorporate such values. ComEd says that in any event, it has committed to monitoring the exchanges, and as market data becomes available for periods beyond those currently reflected in the tariff, it will be reflected in the MVI methodology. (ComEd reply brief at 12)

In response to the IIEC's arguments, **Illinois Power** says its proposal is only a 12-month forward look at the market. IP asserts that its proposal comports with the law as written, and urges that IIEC's "misreading" of the statute be rejected. First, IP says the NFF itself has never issued a report covering more than the next calendar year. Second, IP asserts that the statute does not state that an MVI proposal must include all possible years for which the NFF could issue values. Rather, IP claims it permits utilities (as it does the NFF) to address a lesser time frame. (IP reply brief at 8)

Staff states that that without addressing the validity of the IIEC's argument, this issue is moot, because the NFFs have not produced multi-year determinations of market value. Staff claims that if the next NFF report (to be issued in July 2001 for application beginning in 2002) includes any multi-year market values, the Commission, with the issue properly brought before it in a separate proceeding, can address whether the IIEC's argument is valid. Staff says if that is a valid argument, then the Commission can consider amendments to the utility tariffs to allow for such a multi-year determination or otherwise permit customers to use the NFF's multi-year determinations. (Staff reply brief at 12-13)

G. Positions of Parties on Reopening Regarding Bloomberg and Related Issues

On reopening, the parties addressed the significance of the removal of the Into ComEd trading screen from the Bloomberg PowerMatch electronic trading platform, as well as certain other issues relating to the use of electronic exchanges in the utilities' MVI proposals.

In its brief on reopening, **ComEd** argues that electronic exchanges continue to provide a "very timely, transparent, and unbiased view of the electricity market." (ComEd brief on reopen at 15, citing ComEd Ex. 13.0 at 3) The presence or absence of Bloomberg PowerMatch as one such exchange does not, in ComEd's view, change this conclusion. (Id., citing ComEd Ex. 14.0 at 2) ComEd asserts that only IIEC submitted testimony on reopening generally questioning the use of the electronic exchanges to gather data, and that IIEC's witness continued to confuse the electronic exchanges with the market itself.

ComEd recognizes that there are some legitimate concerns with using electronic exchanges since they are still evolving and the information they post can change over time. According to ComEd, however, the various electronic exchanges provide transparency to the market. Markets are dynamic, ComEd claims, and the exchanges themselves may change over time. ComEd believes that while this may be a reason for monitoring, it is no reason to discard use of the exchanges as a means of collecting data. In ComEd's view, the exchanges provide data that is far more accurate, transparent, and current than the NFF process, and even though a particular platform may change over time, electronic exchanges and electronic trading will continue to exist. (ComEd brief on reopen at 16)

Overall, ComEd argues, the record is clear that the market value index methodology has produced higher market values, lower transition charges and more accurate price signals than the NFF process. Under these circumstances, ComEd contends approval and ongoing use of the MVI methodologies rather than retreating to a methodology that is clearly flawed would be in the best interest of the developing competitive market.

With regard to the appropriate electronic exchange to be used, the hearing examiner's proposed order recommended that as a condition of being permitted to use the Into ComEd exchange in ComEd's MVI tariff, ComEd would modify its data hierarchy to include only offer prices rather than the midpoint of bids and offers when prices for actual transactions are unavailable. The proposed order further proposed that if ComEd is unwilling to accept these modifications to its data hierarchy procedures pursuant to Section 16-112(m), then as an alternative, ComEd would modify its tariffs to provide for use of the Into Cinergy exchange for developing on-peak market values instead of the Into ComEd exchange.

In response, ComEd indicated, in its exceptions to the proposed order, that it would be willing to accept use of the Into Cinergy exchange, rather than the Into ComEd exchange, if the Commission agrees that use of data from the Into Cinergy exchange is preferable. In its replies to exceptions, NewEnergy argues that ComEd should not be permitted to do so. NewEnergy says use of the Into Cinergy exchange for this purpose by ComEd is not supported by the record, and would retard the development of a competitive market in the ComEd service area.

ComEd notes that on reopening, NewEnergy submitted testimony disputing the potential use of the Into Cinergy exchange by ComEd. In its brief on reopening, ComEd asserts that the majority of parties appear to believe it is preferable to use data from the Into Cinergy exchange rather than the Into ComEd exchange, and ComEd says it is willing to accept the alternative described in the proposed order whereby ComEd would use the Into Cinergy exchange instead of the Into ComEd exchange. (ComEd brief on reopen at 16-17) ComEd continues to object to any alternative which would involve the above referenced modification to its data hierarchy procedures as proposed by NewEnergy.

The hearing examiner's proposed order on reopening, as a condition of approving the MVI tariffs, proposed that all utilities who use the Into Cinergy exchange shall add the Intercontinental Exchange ("ICE") as an additional source of on-peak data. It further proposed, in the event ComEd chooses to use the Into ComEd exchange, as discussed elsewhere, that ComEd add ICE as a source of on-peak data to the extent ICE reports activity for the Into ComEd exchange. In its brief on exceptions on reopening, ComEd indicated that it is willing to add the ICE trading platform. (ComEd BOE on reopening at 2) It is noted that the ICE proposal was originally advanced by IP and is more fully discussed below.

In its brief on reopening, **Ameren** says the concern regarding the disappearance of the Into ComEd screen from the Bloomberg service does not affect Ameren, which propose to use Into Cinergy data. (Ameren brief on reopen at 1-2)

Regarding IIEC's general concern that there is a lack of transparency and liquidity in the forwards market, Ameren says this concern confuses the market with the electronic exchanges, which are not markets but rather are windows into the market.

Further, Ameren argues, although all markets, both forwards and spot, are currently going through a slow period due to the higher prices for natural gas, increased costs related to emissions compliance, and credit concerns, the forwards markets themselves are not undeveloped or illiquid. (Ameren brief on reopen at 2) Ameren believes the various electronic exchanges provide transparency to the market, that markets are dynamic and that the exchanges themselves may change over time. In Ameren's view, this may be a reason for monitoring, but it is no reason to discard use of the exchanges as a means of collecting data. Ameren argues that the exchanges provide data that is far more accurate, transparent, and current than the NFF process, and that while a particular platform may change over time, electronic exchanges and electronic trading will continue to exist.

To the extent that new "windows" open, Ameren says it may avail itself of that data. For example, Ameren states that it will use the Intercontinental Exchanges ("ICE") if the level of activity justifies doing so. In Ameren's opinion, the mere shift of activity from one exchange to another does not present a regulatory concern.

In its brief on reopening, **IP** asserts that the "suspension of Bloomberg's into-ComEd screen" has no impact on IP's proposal because IP uses Into-Cinergy data. Furthermore, IP states, it has not limited itself to electronic exchange data in that it also proposes to use Power Markets Week data. (IP brief on reopen at 6)

On reopening, IP also proposed that an additional data source, the Intercontinental Exchange ("ICE"), be included in its "market basket" of sources. IP claims ICE's recent trading activity appears to be robust in that IP observed 288 separate trades representing 5,934,400 megawatt-hours of contracts for a hypothetical March 1 effective date sampled from January 24 through February 7, 2001. (IP brief on reopen, citing Tr. on reopen at 63; RBOE on reopening at 3-4) According to IP, not only will adding ICE create a more liquid market basket, it has another advantage as well. IP asserts that if the Commission orders bi-monthly updates in IP's case to address the concern about providing customers more time to decide whether to take delivery services, then the addition of another source of data means that IP's proposal will have as many or more numbers of possible inputs to its updates than Ameren or ComEd has, while nonetheless updating the market values more frequently than those parties. (IP brief on reopen at 7) In its brief on reopening, IP contends that its bimonthly updating process should be adopted. (IP brief on reopen at 7) IP also indicates that with one exception (to which IIEC agrees as discussed below), IP is in agreement with IIEC's variation on IP's bimonthly proposal, identified in IIEC's reply brief on exceptions. (IP brief on reopen at 7, citing Tr. on reopen at 65-66)

On reopening, regarding IP's new proposal to use on-peak data from the Intercontinental Exchange ("ICE"), **Staff** witness Zuraski said he had not been able to fully assess the merits of the IP proposal, but that his analysis so far showed that the ICE may be another complementary source of data to utilize in the market indexes.

(Staff brief on reopen at 13) Staff further asserts that during cross examination, IP witness Breezeel showed that the volume of trading on the ICE is substantial compared to trading on Altrade and Bloomberg PowerMatch. (Id., citing Tr. on reopen at 63-64)

Based on this evidence, Staff recommends that the Commission allow IP to utilize ICE as one of the data sources for on-peak power prices in the context of IP's market index tariff. Staff also recommends to Ameren and ComEd that they pay particularly close attention to the relative volume of trading on Altrade, Bloomberg PowerMatch, and ICE and consider making a filing at some point to add the ICE to their on-peak data sources, as well. However, Staff does not believe it is necessary to order that change at this time.

On reopening, **IIEC** asserts that in ComEd's MVI methodology, data from the Bloomberg screen print represents 50 percent of the data used for calculating market value, and that the loss of this data due to the removal of the Into ComEd screen from the Bloomberg exchange brings into question the viability of the entire methodology of using electronic exchanges for market data. (IIEC brief on reopen at 4) IIEC claims that these markets appear to be in a state of flux, with trading volume changing from month-to-month and new exchanges opening up regularly. On this point, IIEC says Mr. Nichols of ComEd, under cross examination, describes the volume in Altrade as "up and down" (Tr. on reopen at 234-235); and that Mr. Breezeel of IP stated that during the period January 24 through February 7, 2001, while IP observed 288 separate Into Cinergy trades on the ICE, only one trade was done on both Altrade and Bloomberg combined. (Id. at 63-64). IIEC further states that Mr. Eacret of Ameren testified: "When we looked back to April of last year when we were beginning this process, Bloomberg and Altrade were being hailed as very vibrant, robust trading platforms by Power Markets Week. By the end of the year Power Markets Week was saying other things about them." (Id. at 159)

Further, IIEC argues, the Altrade and Bloomberg markets are, contrary to the testimony of Mr. Nichols, illiquid and undeveloped. (IIEC brief on reopen at 8-9) First, IIEC states, this proceeding was reopened because Bloomberg had discontinued its Into ComEd exchange due to the lack of activity. Second, IIEC asserts, the record does not support Mr. Nichols' suggestion that Altrade has demonstrated growth in trading volumes for most of the year. According to IIEC, workpapers furnished by Mr. Nichols as support for his statement are not in fact supportive of that statement. (IIEC brief on reopen at 8-9, citing IIEC Confidential Cross Ex. 2 on Reopen)

In IIEC's view, it is important that all market participants know the source of the data that is being used to calculate market value. (IIEC brief on reopen at 5) IIEC also argues that with the sources of such market data in a state of flux and shifting from one exchange to another, it continues to be the position of the IIEC that the Commission should be cautious about using electronic exchanges for wholesale forward contracts as the source of data for the calculation of market value. (Id.)

IIEC claims that before new data sources are incorporated into the MVI calculations, there should be a set of standards for data inclusion that can be agreed to by all parties, including utilities, RES, Staff and intervenors, and that until such a mutually agreeable way has been discussed by all parties, it is inappropriate to add to the list of data sources. IIEC witness Dr. Bowyer recommended that included within such standards should be criteria for access and liquidity. (IIEC Ex. 1.0 on reopen at 2-3) She also testified that the decision to include a market data source should not be left to the utility alone without investigation into the quality and longevity of the additional market to be used as a data source. (IIEC Ex. 1.0 on reopen at 5)

With regard to the proposed addition of the ICE to the data sources used by IP in its market value calculation, IIEC believes this proposal is premature. (IIEC brief on reopen at 6) IIEC states that the Staff witness Mr. Zuraski testified that he did not have enough time to fully assess the merits of this proposal. IIEC also states that no utility has provided an assessment of the volume of trading of Into Cinergy on-peak forwards on the ICE exchange, as compared to the Altrade and Bloomberg PowerMatch exchanges.

If the Commission decides to approve MVI methodologies that incorporate data from electronic exchanges, IIEC encourages the Commission to adopt the Into Cinergy market as a substitute for the use of the Into ComEd market in the ComEd methodology. IIEC also asserts that the proper source of the Into Cinergy data also is drawn into question by the reduced activity on the Altrade and Bloomberg exchanges. To date, IIEC states, ComEd has not proposed to add ICE as an additional or alternative data source for Into Cinergy data. IIEC is as concerned about an attempt to use ICE or some other data source as part of the ComEd MVI, as it is about the use of ICE as a data source for the IP MVI. (IIEC brief on reopen at 6-7)

In its brief on exceptions on reopening, IIEC recommends that standards and guidelines be devised before a utility would be allowed to use another data source in its MVI tariff. IIEC asserts that, at a minimum, those standards identified by IIEC's witness should be adopted. IIEC also claims that the ICE has not been tested and there has been no showing as to its propriety at this juncture. (IIEC BOE on reopening at 5-7)

IIEC recommends that before a utility can use a different data source, it must make a filing with the Commission demonstrating, at a minimum, that the proposed data source is workable, robust, allows for meaningful Commission oversight, is relevant to the Illinois energy market, and is devoid of manipulation. IIEC also recommends that any such utility must also meet with interested parties beforehand to ascertain their views and opinions on the appropriateness of the data source. (Id. at 7) Finally, IIEC asserts that the use of the Altrade and Bloomberg trading platforms were evaluated with regard to specified standards and guidelines. (Id.)

In its brief on exceptions on reopening, IIEC also recommended that the Commission take administrative notice of certain information purportedly pertinent to the robustness of the Altrade exchange. (Id. at 3-4)

With respect to IP's proposal to modify its MVI methodology to calculate new market values every two months rather than every month, IIEC does not object as long as the modified PPO decision window would provide that the customer's notice requirement for PPO service would be the lesser or either 30 days or the length of time between the second business day after the 15th of the month and scheduled meter reading date for the next calendar month (with the exception that it would not be applicable to a customer returning from a RES back to PPO service). (IIEC brief on reopen at 10) In its brief on exceptions on reopening, IIEC says that while it finds acceptable the bimonthly market value approach compromise, as modified, IIEC's original position was to support the original hearing examiner's proposed order approach. (IIEC BOE on reopening at 8)

On reopening, **NewEnergy** witnesses testified that NewEnergy still supports the use of electronic exchanges for determining monthly on-peak forward market prices, although they believe it is too early to tell which electronic trading platforms will ever develop beyond their current levels or survive into the future. (NewEnergy Ex. 5 at 8) In its brief on reopening, NewEnergy asserts that dramatic and unanticipated changes have occurred in the energy industry over the past few months, including the California experience and skyrocketing natural gas prices. In Illinois, NewEnergy states, the recent announcement that the "Into ComEd" screen was being removed from the Bloomberg PowerMatch due to lack of sufficient trading and the reduction in trading on the Altrade exchange have had a direct and substantial impact upon the primary issues underlying the instant proceeding. In NewEnergy's view, these recent developments dictate that the Commission retain the flexibility to address unanticipated developments. (NewEnergy brief on reopen at 5)

NewEnergy observes that as originally proposed, ComEd's proposed MVI tariffs would have relied upon two electronic trading platforms, Altrade and Bloomberg, as the sources for on-peak forward price data. However, on November 22, 2000, ComEd notified the parties that the "Into ComEd" screen was being removed from the Bloomberg trading platform due to its lack of use. Additionally, NewEnergy asserts, the volume of trading on the Altrade exchange has been significantly reduced over the past few months.

In NewEnergy's view, these developments vividly demonstrate that the utilities' proposals are too tenuous to be relied upon in the manner suggested by the utilities for any significant period of time, and these questions regarding the source data that form the backbone of the utilities' MVI tariff proposals independently justify the Commission retaining significant oversight and control over the utilities' MVI tariffs. (Id. at 6) The Commission cannot, NewEnergy argues, cede its authority during this transition to a competitive retail electric market. (Id.; NewEnergy BOE on reopening at 18-19 and Attachment A at 4)

In the opinion of NewEnergy, in view of the recent unanticipated developments and other purported deficiencies cited by NewEnergy, the Commission should retain on-going oversight and limit the effectiveness of the utilities' MVI tariffs to a twelve month period, but in no event longer than twenty-four months. Accordingly, NewEnergy requests that the Commission adopt a sunset provision for the utilities' MVI tariffs that is no longer than two years. NewEnergy likewise requests that the Commission clearly state that it retains its Article IX authority to revise the tariffs at any time on its own motion and to initiate hearings to take evidence with respect to such revisions or potential revisions. NewEnergy says these "common sense" revisions will better enable the Commission to respond to the dynamic energy market and protect against market manipulation. (NewEnergy brief on reopen at 6-7; BOE on reopening at 19 and Attachment A at 4)

In its brief on reopening, the **AG** argues that Bloomberg's decision to discontinue reporting trades for the Into ComEd hub evidences the need for alternative data sources. (AG brief on reopen at 6) According to the AG, the history of the market value index dockets demonstrates the dynamic nature of market data sources. By way of example, the AG states that ComEd championed NYMEX's Cinergy futures market in its 1999 MVI case (Docket No. 99-0171), only to see that market fade away, and that Bloomberg recently stopped reporting Into ComEd trades. In the AG's view, this history of "data source decline" makes relying on a small static pool of data sources problematic, and no one data source is guaranteed to retain enough liquidity to be the best, or even an adequate, indicator of market value.

However, a methodology employing a dynamic pool of data sources would, in the AG's opinion, be able to add and remove sources according to their liquidity and other characteristics. The AG says the record shows Ameren, IP and ComEd agree that their methodologies should remain open to new data sources. Therefore, the AG urges the Commission to require each of the petitioners to employ, to the extent possible, a uniform, standardized set of criteria for evaluating and implementing new data sources. To that end, the AG believes that the Commission, utilities and intervenors should work together to develop, to the extent possible, a set of standardized criteria for judging potential new data sources, and that these criteria should be developed in workshops.

In its brief on reopening, the AG also argues that ComEd, IP and Ameren should add ICE as a data source to their MVI tariffs. (AG brief on reopen at 8) The AG says IP has already proposed adding ICE to its MVI tariff data sources. The AG believes ICE is a good example of a data source that should be added to all utility MVI tariffs. To the AG, ICE appears to be a more robust exchange than either Altrade or Bloomberg. The AG says that between January 24, 2001 and February 7, 2001, IP observed 288 separate trades on ICE, representing 5,934,400 megawatts of contracts for a hypothetical March 1 effective date, while during that same period, Altrade and Bloomberg together reported only one trade. (Id., citing Tr. on reopen at 63-64) In addition, the AG states, IP witness Breezeel testified that IP did not subscribe to ICE, or pay any fee, for access to the data he reported.

The AG states that both ComEd and Ameren have indicated that they are willing to incorporate new data sources. According to the AG, the ICE has been shown to be superior in volume of trades reported, and therefore, the AG believes the Commission should require all utilities to add ICE to their MVI tariff data sources.

III. PRICING AND MARKET DEFINITION RELATED ISSUES

A. Introduction and Overview

A number of parties have recommended various adjustments or adders to the utilities' MVI proposals in order to more accurately calculate market value within the meaning of Section 16-112 of the Act. **NewEnergy** argues that the market value established pursuant to Section 16-112 of the Act must relate to retail customers, not wholesale customers. NewEnergy asserts that ARES must schedule amounts of electric power and energy that vary from hour to hour, parallel with their retail customers' varying load throughout the day, regardless of the price associated with providing that varying service. According to NewEnergy, to properly reflect the true cost to serve retail customers, this hourly price and usage uncertainty must be reflected in any market index proposal. Accordingly, NewEnergy recommends that the Commission direct the utilities to make adjustments to account for optionality (load uncertainty), energy imbalance, planning reserves, use of historical off-peak prices, and load shaping for off-peak prices. NewEnergy claims that if the Commission fails to order the utilities to make these necessary adjustments, the utilities' transition charges will be too high, the benchmark against which ARES must compete will be too low, and the competitive market will be paralyzed. (NewEnergy brief at 10-11 and 27)

According to NewEnergy, ComEd and IP inappropriately assert that the adjustments proposed by Staff, NewEnergy, CILCO, and IIEC are designed to artificially inflate market values. NewEnergy contends that this theory posited by ComEd and IP is debunked by Ameren's position in the instant proceeding. NewEnergy states that Ameren agrees with the concept of including a load uncertainty adder in market values and agrees to other recommended adjustments to its proposed methodology. (citing Ameren brief at 10-11) NewEnergy argues that such adjustments are necessary to ensure that the market values properly reflect the value of the "freed up" power and energy. (NewEnergy reply brief at 26-27)

IIEC asserts that the ComEd and IP MVIs do not consider a market in which the utilities sells, and the customers in their service areas buy, power and energy. According to IIEC, there is no evidence in the record to substantiate that the "markets" envisioned by ComEd and IP actually exist for retail customers. IIEC concludes that by definition, the "markets" upon which they rely to determine the market value is contrary to law. (IIEC brief at 8)

IIEC submits that the market involves many kinds of transactions and many kinds of contracts. IIEC claims that the transactions are long-term, intermediate, and short-term in nature, and purchases can also be made in the spot market, and that there are all sorts of transactions of varying lengths, terms and conditions. According to IIEC, the transactions may be for on-peak and off-peak purchases. IIEC contends that several of the utility witnesses agreed their understanding of the "market" did entail these many kinds of transactions and contracts. (IIEC brief at 28)

According to IIEC, even though there is no disagreement as to the variety and kinds of transactions and contracts that take place in the market, the ComEd and IP approaches, by design, utilize only one type of transaction for on-peak power and one type of transaction for off-peak power. IIEC says that for on-peak power, the utilities consider 5x16 monthly forward market observations, and for off-peak power transactions they consider the 1x8 day ahead transactions observed on a historical basis. IIEC claims that the utilities are only considering a subset of transactions and contracts that occur in the market and that there have been no assertions to the contrary. (Id. at 29) In response to ComEd's claim that '[t]here is only one market for power and energy' (IIEC reply brief at 8, citing ComEd brief at 19), IIEC states that ComEd's own witness, Mr. Huntowski, testified as to the difference between the forward and spot markets. IIEC claims that ComEd cannot have it both ways by arguing the difference between spot markets and forward markets on the one hand, and suggesting on the other hand, that there is only 'one' market for power and energy. (IIEC reply brief at 8; IIEC brief on exceptions at 9)

IIEC argues that if the monthly forward market is not the entire market for on-peak transactions, the question becomes whether it is an adequate proxy for the market described in Section 16-112(a) of the Act. According to IIEC, the monthly forward product is not representative of the long term contracts for on-peak pricing, as evidenced by comparing NFF on peak prices to ComEd Applicable Period A on-peak prices. IIEC says that this disparity is highly touted by the utilities in support of their respective approaches. (IIEC brief at 29)

IIEC also contends that the monthly forward product is an inadequate indicator of actual prices in the spot market. IIEC contends that the types of forward contracts used to establish Applicable Period A prices, as reported publicly in March 2000, grossly overstated the spot prices actually experienced. According to IIEC, the forward price quote observed during the March 2000 sample period was over four times the actual prices in the spot market. IIEC asserts that the only logical conclusion to be reached is that monthly forward price information, by itself, is insufficient to determine the market value. (Id. at 30)

IIEC argues that the monthly forward products used by the utilities are not necessarily even representative of the nearer term monthly forward market. IIEC says that in the extreme case, ComEd uses forward prices for transactions as much as 14 months in advance (March observations of prices applicable in May of the following year). IIEC states that the price of a monthly product for the same delivery month can change over time as more information is known in the market. According to IIEC, there has been no credible evidence offered by the utilities that monthly forward price quotes several months old have proven reliable as indicators of forward prices in the near term. IIEC concludes that it is not reasonable to assume that submarket observed by the utilities is an adequate proxy for the full market contemplated in Section 16-112(a) of the Act. (Id.)

IIEC asserts that it is readily apparent that reliance upon the 5x16 monthly forward contracts and 1x8 day ahead contracts do not make up the "market." IIEC says that Section 16-112(a) specifically provides for consideration of "options or futures contract or contracts applicable to the market" and emphasizes the market in which the utility sells, and the customers in its service area buy, electric power and energy. IIEC claims that virtually every utility witness agreed there are more contracts and different kinds of contracts than the ones they rely upon in determining their market value index. IIEC concludes that as a matter of law, the market value determination under the ComEd and IP MVIs are legally deficient. (Id. at 32)

IIEC asserts that the wholesale market is a market in which retail customers in the IP and ComEd service territories cannot participate. Therefore, IIEC says the ComEd and IP proposals do not reflect the market in which ComEd and IP customers buy power and energy. According to IIEC, they reflect only a market in which ComEd and IP and other wholesale players buy and sell electric power and energy. (IIEC reply brief at 4)

IIEC contends that the law applies only to franchised public utilities serving retail customers in Illinois, the retail customers they serve, and the alternative retail electric suppliers who seek to serve those customers. IIEC says the utilities themselves recognize that "customers," in the context of the Act, means retail customers, when they define that term in their tariffs. (Id. at 5)

IIEC asserts that ComEd ignores the fact that the value which Section 16-112(a) references is the “market value for the electric power and energy that the electric utility would have used to supply all of . . . ” a retail customer’s electric power and energy requirements (220 ILCS 5/16-102 - Definition of “transition charge”). IIEC argues that the statute clearly contemplates that the product value to be determined under Section 16-112(a) is essentially a retail product value. Therefore, IIEC says the reference to "customers" in Section 16-112(a) is not a reference to "wholesale customers" as suggested by IP and ComEd, it is a reference to retail customers. (IIEC reply brief at 5-6)

IIEC claims that because the Act defines "service area" as the area in which electric utilities are lawfully entitled to provide power and energy to retail customers in general and an individual retail customer's location in particular, the argument that the Illinois General Assembly intended to reference "customers" other than retail customers in the context of Section 16-112(a) makes no sense. (Id. at 6)

CILCO contends that the utilities' proposed market indices without certain adjustments will not fairly represent the retail market value of power and energy that competitive suppliers must earn to cover their costs. According to CILCO, the proposed indices understate the retail power's true worth and would not accurately reflect the revenue the General Assembly recognized that existing utilities could realize from competitive retail sales, which together with transition charges would provide utilities the reasonable opportunity to obtain a return on their investments. CILCO advocated adjustments to the wholesale-based market indices to reflect load uncertainty characteristics of retail markets; and planning reserve requirements and capacity-backed source requirements to obtain network transmission for serving retail electric load in IP and Ameren service territories. (CILCO reply brief at 1-2)

According to **Nicor**, it stands to reason that the MVI tariffs should reflect the actual cost to serve a retail customer's load, and incorporating adjustments to the MVI tariffs for optionality, energy imbalances and planning reserve will provide retail customers with more options for electric service other than the utility and its two basic offerings of bundled rates and PPO. (Nicor reply brief at 3-4)

According to **IP**, the NFF process is flawed and the only viable alternative presented to the Commission in IP's case is IP's MVI proposal. (IP brief at 17)

IP also asserts that some parties seek to read into Section 16-112(a) of the Act a word that the legislature itself chose not to use. IP says that had the General Assembly meant to limit that subsection to retail customers, it clearly knew how to do so since it not only included a separate definition for the term, it used that term in numerous other sections of the Act. (IP reply brief at 8-9)

According to IP, NewEnergy also attempts to subtly, but improperly, alter the statute. IP says the statute speaks of "the market in which the utility sells, and the customers in its service area buy;" it does not state "and its customers buy" as NewEnergy would have the Commission believe. (Id., citing NewEnergy brief at 9) IP contends the customers at issue do not necessarily have to purchase from the utility which is the whole point of choice. According to IP, the customers envisioned in Section 16-112(a) may or may not be buying from the incumbent and may or may not be retail or wholesale. IP asserts that the NFF is not limited to retail contracts in setting a market value. IP says the MVI proposals replace the NFF. Therefore, IP contends, since the NFF itself does not use contracts only applicable to retail customers or publish values solely applicable to retail load, the MVI should not be so limited either.

IP asserts this undercuts all of the adjustments recommended by NewEnergy that focus solely on NewEnergy's cost of serving retail customers. (IP reply brief at 9)

ComEd claims that many, if not most of, the arguments made by NewEnergy and IIEC should be rejected because they ignore, and are contrary to, the Act. Section 16-112(a) "provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy." According to ComEd, nothing in Section 16-112 requires or permits the Commission to engage in cost-of-service ratemaking based on ARES' cost of serving customers. ComEd argues that this provision requires the Commission to focus on the market value the utility will be able to realize by selling freed-up power and energy. (ComEd brief at 19; reply brief at 8) ComEd contends that, by definition, customers who purchase at the Into ComEd hub are purchasing in a hub that is applicable to ComEd's service territory. According to ComEd, Section 16-112(a) does not say that every transaction or type of transaction must be identified and evaluated. ComEd asserts that because Section 16-112(a) permits the market value to be calculated "as a function of" a "market traded index," that section would allow the Commission to approve the use of a *single* market traded index, options or futures contract as a starting point for establishing market values. (ComEd reply brief at 9)

Staff notes that IIEC contends there is no evidence that any retail customers in these utilities service territories actually buy power and energy in the manner represented by wholesale-oriented 5x16 forwards and 1x8 day-ahead contracts. Staff contends that IIEC is interpreting the statute too narrowly. Staff indicates that when the statute refers to market contracts that are "applicable to" the market in which the utility sells, and the customers in its service territory buy, electric power and energy, IIEC believes that the customers must be actively trading those contracts. However, Staff argues, such an interpretation would place a straightjacket on the statute. (Staff reply brief at 9-10)

According to Staff, the statute specifically authorizes the use of a futures contract in making the market value determination, but there will never be an electricity futures contract that conforms to the way in which retail customers purchase electricity. Staff asserts that the legislature simply cannot be insisting that the basic raw data source for market value tariffs (including futures contracts) represent the manner in which retail customer purchase their goods because futures contracts automatically fail that litmus test. Staff says its criticism of IIEC's rigid interpretation becomes magnified as one considers that retail residential customers will soon become eligible for delivery services. Staff states that it does not know what any residential customer will do with 2 MW of power, 5000 bushels of soybeans, or 40,000 pounds of frozen pork bellies. (Id. at 10)

B. Proposed Adjustments

As indicated above, a number of parties have recommended various adjustments or adders to the utilities' MVI proposals in order to more accurately calculate market value within the meaning of Section 16-112 of the Act. More specifically, these parties have recommended upward adjustment to the utilities' proposed market values to reflect: "optionality" for peak prices; "optionality" for off-peak prices; "energy imbalance" costs; "planning reserve requirements"; "capacity backed" costs; and; and the power associated with acquiring off-peak power. Each of these proposed adjustments is addressed below. The Commission's conclusions on these issues are contained in Section V below.

1. Optionality Adjustment

Several parties suggested that it is appropriate, at least in theory, to make an adjustment to the market values produced by the utilities' proposals to reflect the risk associated with serving uncertain loads. These parties differentiate between loads that vary over time, but are certain, and loads that vary over time in a manner that is uncertain.

The positions of the parties presented prior to reopening are described in subsection a. below. Positions presented on reopening are summarized in subsection b. below.

a. Positions of Parties Initially Presented in the Original Record

According to **NewEnergy**, suppliers must schedule to follow their retail customers' forecasted load up and down throughout the day, regardless of the price or historical usage. NewEnergy asserts that this good faith scheduling obligation is costly to ARES, and that ComEd's methodology fails to account for these actual costs. (NE Ex. 4.0 at 10; BOE on reopening at 5) NewEnergy also argues that the utilities have the burden of proof in the instant proceeding, but rather than provide evidence describing optionality adjustments that they currently employ to price their own transactions in the wholesale marketplace, or establish that they do not use such methods, the utilities have pointed to the lack of such information to justify avoidance of an optionality adjustment. NewEnergy contends that the information is solely in the utilities' possession and they have chosen not to present it in this proceeding. (NewEnergy brief on exceptions, Attachment A at 12; RBOE on reopening at 2-3)

NewEnergy also claims that ComEd attempted to confuse the good faith scheduling issue by stating that ComEd's rules would not require NewEnergy or any other supplier to schedule or match their loads in real time or to dynamically schedule for that load. According to NewEnergy, ComEd's statements regarding scheduling are not responsive to the issue raised by NewEnergy. (NewEnergy brief at 28; reply brief at 29)

NewEnergy contends that these are not merely "costs" to ARES but also represent corollary revenues for ComEd and the other utilities that are selling their freed-up power and energy that would have been used to serve these requirements. According to NewEnergy, this service is "insurance," and the "premium" is paid to ComEd or to other similarly situated utilities that sell the freed-up power. NewEnergy asserts that any cost incurred by an ARES to serve uncertain load is a corollary to the value that a utility will receive as result of selling its freed up power and energy to serve such load. (NewEnergy brief at 28; reply brief at 29; brief on exceptions, Attachment A at 11)

NewEnergy contends that ComEd's modified "Zuraski adjustment" fails to capture the optionality adjustment. According to NewEnergy, ComEd's price shape/load shape adjustment only recognizes expected variations in load, based upon historical data, and thus cannot account for the uncertainty inherent to a customer's freedom to use as much energy as it desires, despite what was used in the past. NewEnergy believes this purported uncertainty must be reflected in day ahead scheduling. (NE Ex. 3.0 at 15-17) NewEnergy states that Staff and CILCO agree that this hourly usage uncertainty, which directly relates to price uncertainty, must be reflected in any market index proposal; whereas, the utilities are attempting to ignore this evidence. (NewEnergy reply brief at 29-30; brief on exceptions, Attachment A at 14)

The hourly price and usage uncertainty, NewEnergy argues, must be reflected in any market index proposal. According to NewEnergy, ARES simply are not permitted to rely on imbalance service as a means to shape standard wholesale blocks. NewEnergy asserts that imbalance service is a transmission ancillary service, and that energy imbalance costs account for any actual difference between metered usage and a supplier's good faith schedule (Id. at 29); whereas, hourly scheduling to an uncertain and daily changing forecast is a supply cost. To reflect this price and usage uncertainty, NewEnergy argues that the market value index methodology must include the additional cost incurred to follow an uncertain load. (NewEnergy brief at 29)

NewEnergy identified "Black's Model" as one method that could be deployed to estimate an appropriate optionality adjustment. According to NewEnergy, Black's Model makes stringent assumptions about the distribution and behavior of commodity prices. NewEnergy claims that while these assumptions may not be consistent with electricity price behavior, Black's Model is widely used as an estimate of the theoretical value of options on electricity forward contracts because it is publicly available, simple to use, and has more benefits than drawbacks as a way to price electricity options or as a way to determine the optionality adjustment. (Id. at 29-30)

NewEnergy says that it recognizes that Black's Model may not be the perfect solution. As a result, NewEnergy suggests that some type of Monte Carlo simulation model could be used to develop an optionality adjustment. NewEnergy states that models by their very nature will not perfectly mimic the competitive market. NewEnergy indicates that the Commission may conclude the current record does not contain a specific model that it wishes to prescribe for calculating optionality value. NewEnergy states that if the Commission finds that the record is deficient in this area, it could reopen the record for the narrow purpose of determining the model used by the utilities. (NewEnergy brief at 30-32; reply brief at 30-31) In its brief on exceptions, NewEnergy suggests that the Commission may open on its own motion a proceeding limited solely to (i) an evaluation of the price that Ameren, ComEd and Illinois Power receive in sales of off-peak power and energy, and (ii) an evaluation of an optionality adjustment. (NewEnergy brief on exceptions, Attachment A at 5)

NewEnergy avers that if the Commission does not prescribe a model for calculating optionality value, it is empowered to prescribe as conditions of tariff approval, one of two alternative solutions related to the optionality issue. In its brief, NewEnergy describes two alternatives for this purpose. The first alternative would begin with what is known as the Zuraski load shaping adjustment and expand the data base to include data for the past three summers. The second would involve directing ComEd to apply the optionality models, if any, which ComEd uses in its wholesale transactions, subject to verification by Staff. (NewEnergy brief at 30-32; brief on exceptions at 13-16 and Attachment A at 11-13) NewEnergy suggests that if either of its two alternatives are adopted, the Commission should recognize that more work needs to be done and should direct all of the parties to work together to identify a more precise and commonly agreed upon method for treating optionality. According to NewEnergy, if the Commission retains jurisdiction over the tariffs, such solutions can be incorporated into the tariffs at a future date. (NewEnergy brief at 30-32)

CILCO argues that the indices used in the proposed market-based alternative tariffs have not been adequately adjusted to account for the costs of following the uncertain portions of retail customers' loads. According to CILCO, when weather or unplanned operational changes cause a change in actual usage as compared to forecasted usage for a customer, suppliers are required to make good faith efforts to schedule and deliver to the changed forecast. CILCO contends that based upon its experience as a retail supplier, the uncertainty imposes a cost on retail suppliers that would be reflected in the price of the retail product, but that is not accounted for in the proposed firm-energy indices, which more closely resemble the characteristics of wholesale products. (CILCO Ex. 3.0 at 3) While CILCO did not propose a specific methodology for making the adjustment, CILCO notes that other parties expressed similar concerns. (CILCO brief at 3)

In its reply brief, CILCO indicates its support for Staff's position that the Commission should encourage each of the utilities to consider modifications to their market indexes to incorporate such a positive adjustment as soon as practicable. (CILCO reply brief at 2)

In the view of **Nicor**, MVI tariffs should reflect the actual cost to serve a retail customer's load, and incorporating adjustments to the MVI tariffs for optionality, energy imbalances and planning reserve will provide retail customers with more options for electric service other than the utility and its two basic offerings of bundled rates and PPO. (Nicor reply brief at 3-4)

In **Staff's** view, contrary to the position of some utilities, an optionality adjustment is not redundant of a load shaping adjustment. (Staff Ex. 3.0 at 36) Staff states that a customer or customer class may have had a history of significant load variation between hours and the effect of such variation is taken into account in the utility proposals for load shaping. Staff argues, however, that none of the utility proposals deals with the cost of hedging against unexpected cost increases due to loads varying more significantly from planned levels. (Staff brief at 31)

Staff states that load is expected to vary between hours within a day, within days of the week, and within weeks of the year. According to Staff, the PJM hourly price data are used to scale up or down the Midwestern monthly prices for fixed blocks of power throughout the month. Staff says that the degree to which the monthly price is adjusted up or down depends on the degree to which a customer or customer class' hourly load has tended in the past to be coincident with the higher hourly prices within that month. Staff contends that, in contrast, an adjustment for the risk associated with serving uncertain retail loads deals not with expected loads, but with deviations from the expected. (Staff Ex. 3.0 at 36)

Staff states that the only proposal in the record, presented by NewEnergy, was a hypothetical example with hypothetical values placed on key inputs to the proposed formula. As discussed above, NewEnergy identified Black's Model as one method that could be deployed to estimate an appropriate optionality adjustment. According to Staff, the method of selecting real-life values for these key variables was not explained. Staff also contends that there were several arguments by rebuttal witnesses that cast doubt on the theoretical underpinnings of using the proposed methodology in the context of the market index tariffs. (Staff brief at 31-32)

While Staff continues to believe that some form of optionality adjustment should be developed and implemented as a part of the market index proposals, Staff indicates that it cannot point to a proposal in the record that is ready for implementation at this time. Staff asserts that the record does make clear that any optionality adjustment would constitute a positive adder to the market index, which could represent the cost of purchasing an option contract that would limit the RES's risk associated with increases (or decreases) in their retail demand coincident with increases (or decreases, respectively) in market prices for wholesale power. Staff recommends that the

Commission encourage each of the utilities to consider modifications to their market indexes to incorporate such a positive adjustment as soon as practicable. (Id. at 32)

Staff asserts that NewEnergy's recommendation to use ComEd's refinement to the Zuraski adjustment with data encompassing the past three summers cannot be immediately implemented. Staff contends that the PJM hourly locational marginal price data which is a part of that methodology is only available as far back as April 1998 (less than three years). In addition, Staff says that according to ComEd's current market index tariff, using the three year period, April 1998 through March 2001, would allow for less than one business day for ComEd to perform the necessary calculations and prepare and submit the Applicable Period A market values and customer transition charges by "no later than the first business day on or after April 1st." (Staff reply brief at 1)

The **AG** did not present testimony in this proceeding. In its brief, the AG states that it believes Staff witness Zuraski's opinion regarding adjustments for uncertain loads is reasonable and supportable. (AG brief at 15)

Ameren indicates that it agrees in principle with the concept of including a load-uncertainty adder in market values. However, Ameren asserts that NewEnergy's suggestion to use Black's model would require significant revision. (Ameren Ex. 4.0 at 7; Ameren brief at 10)

Ameren states that Black's model assumes that the holder would only exercise the option when it was "in the money," that is, when the strike price is lower than the market price for a call or when the strike price is higher than the market price for a put. According to Ameren, however, in this case, the option will be exercised only when the customer's actual usage in an hour varied from that which was forecast. Ameren claims that while this reduces the value of the option, NewEnergy provided no support for its proposal to recognize this reduction in value by discounting the Black's model result by 25% to 50%. Ameren also states that electricity price distributions are not consistent with the assumptions behind Black's model. (Ameren Ex. 4.0 at 7-8; Ameren brief at 10-11)

Ameren contends that while NewEnergy described the inputs necessary to use Black's model as readily available, critical inputs are missing. Ameren claims that while there is an attempt to calculate an hourly option, the time to expiration of an hourly option is not identified. Ameren also asserts that neither the forward price for a given hour a year in the future or the hourly price volatility are identified. Furthermore, Ameren argues that while the value of such an option will depend on load volatility as well as price volatility and the correlation between the two, NewEnergy did not address how Black's model would be modified to address these issues. (Ameren Ex. 4.0 at 8)

Ameren says NewEnergy's Monte Carlo proposal is even more problematic than its proposal to use Black's model. Ameren claims that NewEnergy never discussed this model in any of its testimony and the only discussion of it in the record occurred during the cross-examination of Ameren witness Eacret. Ameren indicates that Mr. Eacret never endorsed the use of the Monte Carlo method for the purposes NewEnergy claims. Ameren contends that the description of the method -- limited to Mr. Eacret's casual summary -- falls far short of providing the Commission a basis on which to make an informed decision. According to Ameren, NewEnergy is overreaching, and its proposal to use the Monte Carlo approach for making an optionality adjustment should be rejected. (Ameren reply brief at 4)

ComEd asserts that its methodology accounts for the costs of serving uncertain loads by utilizing 8,760 hours of loads and the corresponding 8,760 hours of prices as a representative probability distribution as opposed to using an expected weekday and weekend load shape by month. ComEd contends that NewEnergy's proposal for the cost of "load variability insurance" or "optionality" to be added to the price for power and energy to reflect uncertainty in usage and price would represent double-counting. (ComEd Ex. 4.0 at 12-13; ComEd brief at 20; reply brief at 26-27; brief on exceptions at 8; reply brief on exceptions at 8-9)

According to ComEd, NewEnergy's argument reflects a fundamental misunderstanding of ComEd's methodology. ComEd states that under its proposal, historical prices and loads are used only to measure the degree of uncertainty and the positive (but not perfect) correlation between prices and different customer classes' loads. By applying historical data in the price shaping/load shaping steps of the process, ComEd argues, the market index methodology already reflects a premium for the price uncertainty and the correlation between prices and loads. ComEd contends that in applying the historical data, various possible price and load scenarios for the future are evaluated each month, and these scenarios reflect uncertainty in the market because they were developed from actual observations of prices and loads under different conditions. (ComEd. Ex. 4.0 at 14-15; ComEd brief at 20-21; reply brief at 27; reply brief on exceptions at 9)

ComEd also asserts that NewEnergy's argument is based on the mistaken assumption that RESs are required to supply retail load with "load following service" that varies "each hour" throughout the day in response to the developing actual hourly load of the customers. ComEd claims that this is not correct. ComEd contends that NewEnergy's assumption is based on its reading of ComEd's tariffs requiring "Good Faith Hourly Schedules," but that ComEd made clear that "Good Faith Hourly Schedules" require a RES only to generate a plan that helps "minimize" scheduling errors. According to ComEd, neither the Commission's rules nor the ComEd Plan require RESs to supply their load only with "load following service," let alone to match their actual load with their delivered supply in real time. ComEd says that if they did, all electricity customers would have to be dynamically scheduled and supplied with a generation package that adjusts intra-hour to actual intra-hour variation. According to ComEd, this "dynamic scheduling" would be both impractical and inconsistent with how the Illinois market has operated to date. ComEd says that it would not find a RES in violation of the tariff if the RES did not match delivered supply to actual supply in real time. (ComEd Ex. 1.0 at 6-8; ComEd brief at 21)

ComEd states that NewEnergy persists in arguing that load variability insurance is an "actual cost" despite the fact that its own witness conceded that not every product that involves electricity also includes such insurance. ComEd says that NewEnergy persists in arguing that ComEd's tariff requires it to submit schedules for all hours, notwithstanding ComEd witness Naumann's testimony at the hearing that the scheduling provisions of ComEd's tariffs do not require RES to submit a schedule that necessarily varies every hour, or that reflects the purchase of hourly load-following service, or to modify that schedule as each hour approaches, or to have the equivalent of native load service. According to ComEd, NewEnergy's argument that ComEd's methodology does not account for the costs of serving uncertain load ignores the testimony at the hearing that ComEd's methodology already incorporates the impact of uncertain loads by utilizing 8,760 hours of loads and the corresponding 8,760 hours of prices as a representative probability distribution. (ComEd reply brief at 28-29)

According to ComEd, the only model NewEnergy identified for valuing "load variability insurance," Black's model, is a model whose use for this purpose was thoroughly discredited at the hearing. ComEd claims that even its proponent conceded that use of this model may not be appropriate. ComEd states that NewEnergy proposed to estimate load variability going forward through Black's model using historical customer load data, and then taking the resulting option value and adjusting it downward by 25 to 50 percent. This latter adjustment, ComEd argues, was entirely arbitrary and had no support in the record or otherwise. (ComEd brief at 22; reply brief at 29)

ComEd asserts that NewEnergy's proposed use of Black's model to isolate the impact of load and price uncertainty would be inappropriate. As noted earlier, ComEd also contends that such a calculation is unnecessary because the methodology it proposed already adequately accounts for uncertainty. (ComEd brief at 22) ComEd asserts that NewEnergy does not explain how its alternate proposal to use the Monte Carlo model to incorporate an optionality adjustment would be implemented. (ComEd reply brief at 29-30)

In its reply brief on exceptions, ComEd contends that NewEnergy is incorrect in asserting that “the utilities themselves employ optionality adjustments in the wholesale marketplace today.” (ComEd brief on exceptions at 9, citing NewEnergy brief on exceptions at 13-14) ComEd claims that the data request relied upon by NewEnergy requested information regarding ComEd's internal risk management methods, not information regarding “optionality adjustments.” ComEd asserts that it does not use “optionality adjustments” in setting market price. (ComEd reply brief on exceptions at 10)

According to **Illinois Power**, NewEnergy has failed to prove the need for any adjustment for optionality beyond those already incorporated in IP's methodology. IP states that it already has a price shaping adjustment that, when applied to the customer's or class' load shape, already adequately accounts for the variability NewEnergy describes. (IP Ex. 2.6 at 20-21) IP says that NewEnergy appears to only be concerned with the cost it might face. According to IP, in taking this single-focused approach, NewEnergy ignores the value an ARES may receive from a customer. IP asserts that the customer, by signing a fixed contract with the ARES, bears a similar risk - which is in fact a potential benefit for the ARES. IP states that because the customer's usage may not be driven by market price that the ARES may well reap substantial benefits when a customer consumes less in a higher priced hour or more in a lower priced hour. IP contends that NewEnergy provides no evidence that when properly netted, any additional adjustment is warranted. (IP brief at 18)

IP argues that even if there were better evidence on the need for an optionality adjustment, the methodology proposed by NewEnergy to value the option is flawed. IP contends that the use of Black's model, as NewEnergy proposes, is inappropriate for use in this context. IP states that Black's model assumes that the option will be exercised every time there is money to be made in doing so. IP contends, however, that this is not how electric usage decisions are made. IP asserts that a change in customer consumption is not influenced by the spot market price of electricity. IP also claims that other facets of the model do not fit into the way electricity is consumed. In IP's view, because usage varies, a fixed, defined block of the underlying commodity does not exist; there is no public data source by which to price the price volatility component of Black's model; and, as discussed above, NewEnergy's proposal does not attempt to value the times when an ARES may benefit from the option. (IP Ex. 2.6 at 21-22) According to IP, NewEnergy offered an "arbitrary adjustment factor" to the model in a further effort to get the model approved and the evidentiary voids left by NewEnergy's proposal cannot be filled by such a “fudge factor.” (IP brief at 19)

IP contends that even NewEnergy acknowledged that its "assumptions may not be consistent with electricity pricing behavior." (Id., citing NewEnergy brief at 28) IP says that NewEnergy has also, at the eleventh hour, proposed two new "options", neither of which has any record support. (Id., citing NewEnergy brief at 29) IP says these sort of eleventh hour proposals have not been tested by the evidentiary process and do nothing to promote sound or orderly decision making. IP claims it has not been afforded an opportunity to present evidence on these last minute proposals and it therefore objects to them. (IP reply brief at 16-17)

IP also states that it is not willing to adjust its market values for optionality. (IP brief at 4)

b. Positions of the Parties on Reopening

In its brief on reopening, **NewEnergy** restates some of the arguments raised in its previous filings which are summarized above. These arguments will not be repeated in their entirety here.

On reopening, NewEnergy presented the testimony of Daniel J. Somers from the Corporate Finance group at Ernst & Young. NewEnergy says Mr. Somers specializes in electricity with primary responsibilities as a project manager for engagements such as applying real options theory to the valuation of generation assets and developing hedging and risk management procedures for purchasing or trading functions. (NewEnergy brief on reopen at 9) Mr. Somers testified that in determining the cost of load variability insurance, or optionality, a supplier must determine how a customer's consumption can vary as compared to historical or long-term forecast, and how hourly prices for electricity can vary. (NewEnergy BOE on reopening, Attachment A at 10-11, citing NewEnergy Ex. 6.0 at 15)

According to NewEnergy, there no longer is any legitimate basis for the utilities to assert that they do not understand the meaning of an "optionality adjustment." NewEnergy also claims there is no legitimate basis upon which the utilities could assert that optionality does not factor into the market price of electric power and energy. NewEnergy adds that the utilities cannot deny that they bear the burden of proof in the instant proceeding. NewEnergy argues that the failure of the utilities to provide the necessary information, that they could have obtained and that they have the burden to prove, results in a presumption against the utilities. (Id. at 7; NewEnergy BOE on reopening at 4-5)

NewEnergy states that Ameren employs an optionality adjustment and that Staff recognized that the other adjustments included in the utilities' methodologies do not capture the costs associated with optionality. NewEnergy contends that ComEd and IP continue to choose obfuscation rather than transparency and failed to provide this "relevant" and "valuable" information. NewEnergy asserts that ComEd and IP manipulate information and refuse to provide witnesses and information that is solely in their possession. (NewEnergy brief on reopen at 8; BOE on reopening at 9-10)

NewEnergy asserts that when a party has to deliver an uncertain amount of an asset for a known price at an uncertain cost, that party, if prudent, will charge a risk premium for that uncertainty. NewEnergy says that this is true for markets in general, but especially true in the electricity industry. (NewEnergy BOE on reopening, Attachment A at 10, citing NewEnergy Ex. 6.0 at 4-5) NewEnergy contends that the risk presented by uncertainty has a value that can be estimated, especially if one has access to the pertinent data. (NewEnergy brief on reopen at 10; BOE on reopening at 6 and Attachment A at 10) NewEnergy claims that Black's Model, Monte Carlo simulation based models or Binomial trees may be used for electricity options or optionality. (NewEnergy BOE on reopening, Attachment A, citing Tr. on reopening at 299-300)

According to NewEnergy, there are various types of options style models that are employed in the energy industry. NewEnergy asserts that one model for options on futures that is often used in valuing electricity options is Black's model and other models that are employed regularly in the energy industry include the Monte Carlo simulation and Binomial Models. (NewEnergy brief on reopen at 10; BOE on reopening at 6)

NewEnergy contends that to determine the cost of optionality, a supplier must first determine how its customers' consumption can vary as compared to historical usage and then determine how hourly prices for electricity can vary. (NewEnergy brief on reopen at 11) NewEnergy witness Somers claims that this adjustment will result in an increase in the market value by several percentage points. (Tr. on reopen at 342)

NewEnergy reports that Ameren says it has developed an optionality model at great expense and effort, that Ameren claims the model is highly proprietary, and that Ameren asserts that an optionality adjustment would have a "relatively minor impact." According to NewEnergy, Ameren's assertions are not logical because they assume a knowledgeable market participant would put forth great expense and effort to quantify and keep confidential something that is expected to be of insignificant value. NewEnergy contends that contrary to Ameren's assertions, companies throughout the energy industry expend significant sums precisely because they believe that optionality can have a significant impact on the market. NewEnergy asserts that the effort put forth by the utilities in this proceeding to avoid addressing this issue suggests they believe that this adjustment would have a significant impact. (NewEnergy brief on reopen at 11; BOE on reopening at 7-8 and Attachment A at 10-11)

According to NewEnergy, ComEd makes the "incredible" assertion that it still does not understand the term optionality. NewEnergy asserts that ComEd presented witnesses who claim not to have personal knowledge of the way in which ComEd calculates its optionality adjustment. NewEnergy claims that regardless of ComEd's assertions, "optionality" is a well-established term, especially in the energy industry. (NewEnergy brief on reopen at 12, citing NewEnergy Ex. 6.0 at 15; BOE on reopening at 9)

NewEnergy reports that ComEd witness Leonard declared that "to the best of my knowledge" ComEd does not "explicitly" employ an optionality adjustment. NewEnergy contends this simply is not a credible assertion. (NewEnergy brief on reopen at 12)

NewEnergy asserts it is significant that ComEd witness Leonard "admitted" ComEd is capable of estimating the value of an option that would cover the cost of serving uncertain load. NewEnergy concludes that, contrary to ComEd's other assertions, it would appear that a cost associated with managing the risk of serving uncertain load is not alien to ComEd. NewEnergy contends that ComEd simply has chosen not to provide such information to the Commission. (NewEnergy brief on reopen at 13; BOE on reopening at 7-9 and Attachment A at 11)

NewEnergy claims that IP resorts to hiding behind its newly revised corporate structure to assert that it does not utilize an optionality adjustment. According to NewEnergy, IP claims that since it is no longer active in the wholesale trading market, the issue is moot. NewEnergy disagrees. The fact that Illinois Power transferred its fossil-fueled generation assets to its affiliate Dynegy Midwest Generation, NewEnergy argues, is irrelevant to the issue. NewEnergy claims that the burden rests upon IP to demonstrate that its proposal reflects the value of the freed up power and energy. NewEnergy asserts that one of the components of that market value is an optionality adjustment. According to NewEnergy, if IP did not have the necessary information in its immediate possession or control, the burden is upon IP to obtain that information from its affiliate or otherwise incorporate it into its proposed tariffs. NewEnergy contends that IP's failure to do so, combined with its assertion that it would not accept the inclusion of an optionality adjustment that is being used in the Illinois market, effectively precludes the Commission from making a finding that IP's tariffs are "just and reasonable." NewEnergy says that if IP continues to fail to prove its case, the Commission should direct IP to withdraw its pending MVI petition and resubmit a more complete petition. (NewEnergy brief on reopen at 13-14)

NewEnergy claims that the utilities' proposed methodologies fail to reflect the necessary optionality adjustments. NewEnergy asserts that given the inputs into the utilities' methodologies rely solely upon historic load shape and price shape data, they do not and cannot capture all of the costs associated with future load and price uncertainty. According to NewEnergy, the proposals filed rely significantly on hindsight assuming perfect knowledge and do not reflect the fact that price and load for any given hour are not determined quantities, and cannot be known going forward. NewEnergy argues that the inability to predict the future and the corresponding risk associated with that inability is regularly valued in the energy options market and should be incorporated in any index proposal. (NewEnergy brief on reopen at 14-15; BOE on reopening, Attachment A at 11)

NewEnergy recommends that the Commission direct the utilities to include a risk premium or optionality adjustment in their MVI methodologies, calculated using an options style model. NewEnergy claims that at a minimum, Ameren's approach should be used to modify Ameren's proposal. NewEnergy says that if ComEd and/or IP continue to maintain that they do not have an "explicit" optionality adjustment, then the Commission should order the Ameren adjustment to be incorporated in the MVI methodologies proposed by the other utilities. (NewEnergy brief at 15-16; BOE on reopening at 10 and Attachment A at 12)

In its brief on exceptions on reopening, NewEnergy claims that its proposal to apply the Ameren methodology to adjusted the MVI tariffs of the three utilities is a reasonable solution that can and should be implemented, at least on a trial basis for a single year. NewEnergy says that if the utilities refuse to accept this solution, then the Commission immediately should take up the issue of an optionality adjustment in an investigation to develop adjustments that should be implemented not later than May, 2002. (NewEnergy BOE on reopening, Attachment A at 13)

In its brief on exceptions on reopening, NewEnergy contends that the Commission should admonish the utilities for continuing to manipulate information and refusing to provide witnesses and information that is solely in their possession. NewEnergy also states that the order should admonish Illinois Power for presenting a witness that was completely unqualified to address the topics that were explicitly included in the reopening. (NewEnergy BOE on reopening at 8-9; RBOE on reopening at 2-3) In response, IP asserts that NewEnergy does not complain that IP's witness was unable to address the narrow issues on which this case was reopened. IP also states that these issues were selected by NewEnergy, not IP. (IP RBOE on reopening at 2)

In response to NewEnergy, ComEd asserts that NewEnergy does not identify the information in its brief that ComEd allegedly improperly withheld from NewEnergy or from the Commission. ComEd says it responded to numerous data requests presented by Staff, the AG, NewEnergy and IIEC. ComEd claims that no other party has alleged that ComEd has withheld any information. ComEd also states that it produced a witness with actual trading experience, at NewEnergy's request. ComEd claims its witness clearly stated that he had personal knowledge of any adjustments calculated by ComEd, and he unequivocally testified that ComEd did not calculate such an optionality adjustment. (ComEd RBOE on reopening, citing ComEd Ex. 11.0 at 2-3)

NewEnergy suggests that the Commission should retain flexibility in the way it applies this adjustment, and adapt Ameren's methodology as appropriate to fit within the schemes of ComEd and IP. According to NewEnergy, the confidentiality of the Ameren model and data can be protected if Staff, with Ameren's assistance, were to perform the calculation on a confidential basis. (NewEnergy brief at 16; BOE on reopening at 10 and Attachment A at 12)

NewEnergy argues that the inclusion of three years of PJM data in the calculation of the MVI is inappropriate. NewEnergy claims that this proposal does not even begin to solve the problem of exclusion of an optionality adjustment. According to NewEnergy, any change in the methodology that is designed to obtain a clearer picture of the past, by definition, cannot be said to capture the costs associated with future variability or uncertainty. NewEnergy also contends that adding more years from the past, including much older data, may run the risk of using an appreciably different generation supply scenario to create a current MVI. NewEnergy says that ComEd witness Nichols admitted that it may be inappropriate to rely upon such older data. NewEnergy contends that this proposal would not resolve the optionality issue and likely would create additional problems that have not been fully explored. (NewEnergy brief on reopen at 16; BOE on reopening, Attachment A at 13-14)

Like NewEnergy, **ComEd** restates several of the arguments that were contained in its previous filings in this proceeding. Because such arguments are summarized above, they will not be restated here in their entirety.

ComEd claims that despite NewEnergy's claim that "optionality" is "commonly used" in the electric industry, there has never been a clear definition of the term "optionality" provided in the record. According to ComEd, NewEnergy's witnesses have variously described optionality as both "a cost associated with uncertainty" and as "analogous to purchasing insurance to protect against variability." ComEd says those witnesses with actual experience in trading power and energy in the Midwest questioned both concepts. ComEd claims that various witnesses, including those presented by NewEnergy, made it clear that there is no industry agreement on how to define or measure optionality. (ComEd brief on reopen at 5)

ComEd contends that to the extent the term optionality refers to the cost of load and price uncertainty, it is already accounted for in ComEd's MVI methodology. ComEd also asserts that to the extent it refers to optional "load variability insurance" procured by a particular supplier, it is not part of the market value for power and energy. ComEd also argues that there is still no record support for a methodology for estimating optionality. (ComEd brief on reopen at 5-6)

According to ComEd, its MVI methodology accounts for load and price uncertainty by utilizing 8,760 hours of loads and the corresponding 8,760 hours of prices to create a representative probability distribution as opposed to using an expected weekday and weekend load shape by month. This 8760 methodology, ComEd says, is an enhancement of the Zuraski adjustment approved by the Commission in the delivery services proceeding and was specifically designed to reflect the price and load variability. ComEd contends that it is analogous to the type of Monte Carlo simulations that NewEnergy claimed might help measure "optionality." ComEd asserts that NewEnergy has never fully understood this adjustment or how load and price uncertainty are taken into account in ComEd's MVI methodology. (ComEd brief on reopen at 6-7)

ComEd claims the utilities do not use "optionality models" to set prices. ComEd contends that suppliers generally manage the risks associated with uncertain load requirements through market monitoring and portfolio management. According to ComEd, whether a supplier incurs costs with respect to "optionality" and the prices it ultimately charges will depend on its overall portfolio and other market factors. ComEd says that Ameren witness Eacret explained why Ameren's optionality model was not necessarily predictive of the market value for power and energy. (ComEd brief on reopen at 7)

According to ComEd, NewEnergy's optionality adjustment ignores the fact that ARES can use options and take other actions in order to both reduce costs and increase profits. ComEd contends that an ARES could use options when serving customers at a fixed price that is calculated to provide extra profits when market values go down. ComEd says options can also themselves be bought and sold in order to increase profits. ComEd claims that the costs associated with options that are purchased by utilities are often borne by the utility's shareholders and utility shareholders should not have to bear costs associated with the risk management strategies of other suppliers as well. (ComEd brief on reopen at 8)

It is worth noting, ComEd says, that NewEnergy has not proposed any adjustments to the methodology to account for higher profits or cost savings by NewEnergy or other suppliers due to purchasing options or risk management, nor has it proposed to make any adjustments to offset costs that the utilities incur and ARES do not, such as the costs associated with returning customers. ComEd asserts that NewEnergy and other non-utility suppliers have carefully avoided any examination of the prices at which they buy and sell power and energy, or their actual costs. (ComEd brief on reopen at 8)

According to ComEd, each supplier has its own costs and way of looking at the market and models do not provide or create market values. ComEd asserts that others may not be willing to buy at the price you request, and if the market is sufficiently above your costs, you may still choose to negotiate. ComEd also argues that a particular supplier's costs do not equal market value. (ComEd brief on reopen at 9)

ComEd further contends that there is not necessarily a difference between the cost of serving a known load or one where the purchaser is able to vary the amount of power and energy taken from hour to hour in a defined range. ComEd claims that whether there would be a difference depends on a number of factors, which may include the supplier's and buyer's other sales and purchases in their portfolio and cost of operating any owned or controlled physical generation, and when and by how much the second purchaser deviates its load from what is expected. According to ComEd, prices are established through subjective negotiations between the transacting parties. (ComEd brief on reopen at 9)

ComEd asserts that even if there were evidence that an optionality adjustment is necessary, there is not an appropriate method in the record for calculating this adjustment. ComEd claims that neither the Monte Carlo simulation nor Black's Model would be appropriate for calculating optionality and that there is no record support for using Ameren's optionality model. (ComEd brief on reopen at 9-10)

ComEd argues that the Monte Carlo simulation is not an alternative methodology for setting market value credits. According to ComEd, the Monte Carlo simulation is not a model but, instead, is a mathematical technique that can be utilized in a variety of models. (ComEd brief on reopen at 10)

ComEd claims that the deficiencies associated with Black's Model were well documented in the initial phase of this proceeding. ComEd says that although Mr.

Somers claimed that some entities use a "modified Black's Model," he was unable to explain what modifications were made because any model employed by an electric utility, of which he had first-hand knowledge, is considered highly confidential and proprietary and subject to confidentiality agreements. ComEd contends that while Mr. Somers did not provide any of these models to ComEd for analysis or evaluation, he did confirm that model designs and assumptions differed among customized models, and that the parties that design and use such models may differ on the assumptions used. (ComEd brief on reopen at 11)

ComEd asserts that NewEnergy's suggestion that the Commission should order the Ameren adjustment to be incorporated in the MVI methodologies proposed by the other utilities is not a workable solution. ComEd reports that Ameren has claimed its "optionality model" is highly proprietary and that Ameren is not willing to share its model with ComEd or IP. ComEd says that Ameren does not have any reason to believe that ComEd or IP would want to use this model because these companies may believe Ameren "highly over-valued or under-valued that risk, and they would have to make that decision". (ComEd brief on reopen at 11, citing Tr. on reopen at 144)

ComEd says it cannot agree to a methodology without an explanation of how it is likely to work or the results it is likely to produce. ComEd claims that NewEnergy's witness conceded that a utility should not rely on a model that it never reviewed and that a model should be tailored to the purpose that it is used. ComEd also avers that the use of Ameren's proprietary model would result in a lack of reliance on objective data, relative transparency, and consistency. (ComEd brief on reopen 11-12)

According to ComEd, the qualifications of NewEnergy's expert witness were limited at best. (ComEd brief on reopen at 12) ComEd also asserts that NewEnergy's claim that the current MVI methodology's use of historical price and load variability data is inadequate to incorporate the value of risk presented by future variability or uncertainty is unsupported by the record. ComEd contends that the MVI methodology's use of actual historical data regarding the variability and correlation of prices and loads is the most objective and transparent way to estimate future uncertainty. ComEd argues that historical data is commonly used in uncertainty evaluations. ComEd claims that beta is a common standard risk measure for financial securities and that beta is most commonly measured by examining how the price of the security has moved in the past and that stock price volatilities are often calculated using historical data. (ComEd brief on reopen at 14) The Commission observes, however, that the record does not indicate whether investors rely upon unadjusted betas derived solely from historical data.

ComEd notes that NewEnergy pointed to a historical data point to try to establish that historical distributions cannot reflect future uncertainty. According to ComEd, NewEnergy also conceded that historical data makes a good foundation for any analysis. (ComEd brief on reopen at 14)

ComEd states that it offered to include three years of PJM data in the MVI methodology to reduce the chances of significantly understating or overstating the effects of load and price uncertainty in estimating the market value credits. ComEd says this proposal was first formulated by NewEnergy in the initial phase of this proceeding. (ComEd brief on reopen at 12, citing NewEnergy brief at 29) ComEd states that Staff witness Zuraski has also agreed with this proposal. (Id., citing Staff Ex. 8.0 at 3) ComEd says that on reopening NewEnergy appeared to reject its own proposal, recasting it as one made by ComEd, and that NewEnergy has provided no explanation of the reasons surrounding this recent change of position. (ComEd brief on reopen at 12)

Illinois Power argues that it is not an active participant in the wholesale electric market place today and that use of an optionality adjustment in the current market place is moot. IP asserts that no optionality adjustment is warranted in IP's case. (IP brief on reopen at 3-4)

IP claims that if one were to endeavor to determine the value NewEnergy asserts is present, a proper adjustment must look at both the cost to the ARES and the benefit that the ARES may receive from a customer. IP contends that on cross-examination, NewEnergy's expert agreed that netting the costs with the benefits "would be a good way of modeling" an optionality adjustment. (IP brief on reopen at 4, citing Tr. on reopen at 342) IP claims that no NewEnergy witness has put forth a methodology that actually performs this aspect of NewEnergy's adjustment. (IP brief on reopen at 4)

IP contends that NewEnergy's proposal to apply whatever model Ameren uses to all three utilities is more problematic than helpful. IP claims it has no way of knowing whether this model is suitable for addressing the optionality issue, including whether it addresses both the cost and the benefit sides of the equation, whether Ameren's model is compatible with the way IP compiles data or whether it can be run in a manner that meets the updating needs built into IP's methodology. IP reports that Ameren's model is considered highly proprietary by Ameren and IP has not been allowed to see it. In such a case, IP argues that not only would it be inappropriate to adopt such a model sight unseen for IP's use, it is not clear how tariff language could be crafted to do so. (IP brief on reopen at 5)

With regard to any complaints by NewEnergy that the utilities failed to present witnesses that had actual trading experience, IP says that while its witness on reopening was not an electric trader, it had presented such a witness (Mr. Peters) in the initial round of these proceedings. IP claims that since NewEnergy had an opportunity to cross Mr. Peters, NewEnergy's desire to learn from someone with such experience was presumably quenched at that point, at least in IP's case. IP asserts that on reopening, the issues were more limited, and IP presented a witness who could and did address them. (IP brief on reopen at 5-6)

According to IP, NewEnergy's inability to create a proper foundation for its methodology and to properly demonstrate how such a methodology should work supports IP's position that the record simply does not contain a viable approach for use in quantifying an optionality adjustment. (IP brief on reopen at 5)

Ameren states that it models "optionality" risk. Ameren says that it uses an optionality model, which is highly proprietary and which Ameren developed itself at great expense and effort, as one component of its overall pricing model. Ameren asserts that its modeling does not justify the use of an optionality adder in the MVI calculation. (Ameren brief on reopen at 2-3)

Ameren agrees in principle with the concept of including a load-uncertainty adder in market values; however, Ameren asserts that for a variety of reasons, none of the methods for calculating an optionality adjustment proposed thus far is satisfactory. Ameren claims it is not clear that in a competitive environment, market prices will support the full recovery of such an adjustment. According to Ameren, there are a wide variety of opinions amongst the market participants in the state of Illinois regarding what that adjustment should be. Ameren contends that it would be difficult to demonstrate that any one theoretical method of calculating the adjustment truly represented its realizable "market" value. Ameren also claims that it does not believe the "relatively minor impact" of such an adjustment merits the level of attention that it has received. (Ameren brief on reopen at 3)

Ameren reports that NewEnergy proposed that the Ameren model be provided to the Staff for use in determining optionality adjustments for all three MVI tariffs. Ameren claims this proposal is severely flawed. Ameren says its optionality model is one component of an overall pricing model. According to Ameren, it is not appropriate to extract one component of that pricing model and add it to the MVI tariff, a completely different pricing model, with which the Ameren pricing model is incompatible. (Ameren brief on reopen at 3)

Ameren also contends that the fact that Ameren models optionality risk does not mean that the market price will reflect Ameren's assessment, penny for penny. Ameren says NewEnergy suggested that the measurement of risk associated with price and load volatility results in a "premium" that is reflected in the market price. Ameren claims, however, that the price in a market is the price at which the seller is willing to sell and the buyer is willing to buy. Ameren contends that simply because a seller may wish to include a risk premium in the price does not mean that a buyer will agree to pay it. According to Ameren, ComEd and IP do not even model to identify "optionality" risk beyond that which is included in their respective methodologies, so there is no basis on which to conclude that those companies seek to recover the type of premium that NewEnergy describes. (Ameren brief on reopen at 3-4)

Ameren argues that if ComEd and IP do not seek to recover such a premium, it is unclear how Ameren could unilaterally impose such a premium in the market because Ameren cannot dictate the market price of "freed up" power and energy. Ameren also contends that the effect of any adjustment would be minor. Ameren asserts that its proposed MVI method captures much of any optionality risk and that there is only a small increment that remains unaffected in the MVI result. (Ameren brief on reopen at 4)

The **AG** states that ComEd offered its 8760 hour methodology as a further improvement to the Zuraski Adjustment. The AG claims that in response to parties' concerns regarding the cost to serve uncertain load, ComEd proposed its 8760 hour methodology. The AG asserts that ComEd's proposed 8760 hour methodology appears to adequately account for load uncertainty. The AG contends that the cost associated with load uncertainty can reasonably be approximated by ComEd's proposed 8760 hour methodology. (AG brief on reopen at 4-5)

The AG claims that while it is certainly true that the usage demanded in the summer of 2001 will not necessarily reflect the usage demanded in the summer of 2002, a prediction based on actual hourly prices weighted by actual hourly loads is a reasonable approximation. The AG says this is especially true considering the paucity of alternatives. The AG claims that is one reason why it supports the two year sunset proposal in the hearing examiner's proposed order. According to the AG, under such a plan, the Commission, and any interested party, has sufficient time to create and/or explore other options, without fostering a commercially unreasonable burden on any party. The AG believes that costs of doing business should be allocated as fairly as possible so as not to give any party a competitive advantage or disadvantage. Therefore, the AG concludes that ComEd's proposed 8760 hour methodology appears, at this point, to strike an appropriate competitive balance. (AG brief on reopen at 5-6)

The AG states that the testimony of Ameren supports the AG's reasoning regarding the use of the 8760 hour methodology to capture the cost of serving uncertain load. The AG reports that Ameren witness Eacret testified that failing to capture this incremental cost of serving uncertain load would have no impact on competition in Illinois. (AG brief on reopen at 6)

Staff reports that ComEd witness Leonard indicated that, while he was uncertain about the precise meaning of NewEnergy's term "optionality adjustment," he nevertheless believed that ComEd does not make such an adjustment in setting wholesale prices. It is noteworthy, Staff asserts, that Mr. Leonard focuses his comment on wholesale transactions, since Staff's understanding of the optionality adjustment concept is that it would pertain primarily to retail load or at least to full-requirements wholesale load. Staff argues that an "optionality adjustment" would be irrelevant to a known load, such as those loads associated with wholesale transactions posted on Altrade for constant blocks of power in all the on-peak hours. (Staff brief on reopen at 6-7)

Staff states that Ameren agrees in principle with the concept of including a load-uncertainty adder in market values. According to Staff, Ameren uses an optionality model, which is highly proprietary and developed at great expense and effort. Staff says that Ameren balked at the notion of using that model in the context of its market index tariff to make an optionality adjustment. Staff states that Mr. Eacret believes that, if applied to increase market values and reduce transition charges, this highly proprietary model, developed at great expense and effort, would most likely have a "relatively minor impact." Staff says it finds it incredulous that both ComEd and Ameren would go through such efforts to develop models to estimate optionality costs that Ameren then claims are insignificant. Staff contends it is “odd that the Company so carefully guards a methodology for computing values that its own witness believes are so minor that they need not be considered . . . , at least not in the context of computing transition charges.” (Staff brief on reopen at 9)

Staff notes that “Mr. Zuraski was not persuaded that an optionality adjustment is unwarranted,” but, as in the initial phase of this consolidated docket, he offered no methodology to incorporate such an adjustment into the proposed tariff. (Staff brief on reopen at 9)

Staff states that ComEd witness Leonard opined that no option pricing model can "create" market values, and that a particular supplier’s costs do not equal market value. Staff says he also opined that there is not necessarily a difference in the cost of serving a known load and a load where the purchaser is able to vary the amount of power and energy taken within a defined range. Staff reports that under cross examination, Mr. Leonard explained his belief that the cost of serving varying loads might not necessarily deviate from the cost of serving a known load. Staff says he used a destructive-interference-of-waves metaphor in order to describe a scenario in which a supplier might successfully market to a variety of customers with loads that vary over time in different ways, so that when added together they produce smaller peaks than a single wave alone. (Staff brief on reopen at 10-11, citing Tr. on reopen at 106). Staff claims that Mr. Leonard did not present any assessment of the degree to which an actual retail supplier could manage to create such a “fortuitous” outcome. Staff argues that it seems unreasonable to speculate that anything remotely resembling a fixed block load could ever be achieved by a given supplier by attempting to combine disparate types of load. (Staff brief on reopen at 11)

In Staff’s opinion, the evidence on reopening fails to change the conclusions made by the hearing examiner’s proposed order in the initial phase of the consolidated docket. With regard to NewEnergy’s proposal for the Commission to order the three utilities to use an Ameren optionality model to compute an optionality adder, Staff cannot agree with such a proposal. (Staff brief on reopen at 11)

Staff reports that it sought such information through data requests, but has never seen this model, and thus, Staff has not been able to assess it. On this point, the Commission notes that no motions to compel production of this information were filed.

Staff claims that even assuming it were to see the model and determine that it is acceptably performing its current function within Ameren, there is nothing in the record to suggest that Staff would be able to render it acceptable as an optionality adjustment in the context of PPO and transition charge tariffs. Staff asserts that IP and ComEd have neither seen the model nor any modifications to it that Staff might conceivably wish to make. In this regard, Staff speculates that IP and ComEd would not accept such a “pig in a poke”, and any attempt to force them to accept such an outcome would cause them to seriously reevaluate their decision to implement market index tariffs. Staff avers that to a lesser extent, the same supposition applies to Ameren. (Staff brief on reopen at 11-12)

Staff reports that ComEd indicated a willingness to utilize three years of hourly load and PJM price data in the context of implementing ComEd’s load shaping adjustment. Staff claims that while no party’s witness seems to believe that this procedure will infuse the methodology with an "optionality adjustment," Staff has no objection to the three-year data proposal. Having said that, Staff notes that ComEd witness Leonard and Staff witness Zuraski both appeared indifferent to the use of three rather than one year of hourly load and PJM price data, and NewEnergy witness Somers opposed the use of three years of data. (Staff brief on reopen at 8-9)

2. Load Shaping for Off-Peak Prices

Generally speaking, Section 16-112(k) of the Act provides that market value will be determined for each customer class by adjusting the market values to account for the daily, monthly, annual, and other relevant characteristics of the customers’ demands on the electric utility’s system. By way of background, Staff notes that in the individual utility proceedings that led to the adoption of the delivery service tariffs which went into effect on October 1, 1999, Staff witness Zuraski made a proposal for an adjustment to estimate the cost difference of serving a retail customer class’ varying hourly loads within the 16 on-peak hours of each weekday versus a constant block as in a standard 5x16 wholesale contract. In its orders in those proceedings, the Commission required all the utilities who planned to compute transition charges to use this adjustment to on-peak market values. (Staff brief at 46)

In the current proceeding, ComEd and Ameren have each proposed to modify this load shaping adjustment. Staff states that the utilities’ original and modified load-shaping methodologies basically superimpose hourly price shapes on otherwise fixed monthly wholesale block prices. Staff asserts that these proposals are not designed to account for all other costs of retail "load-following" or of reducing to some acceptable level the amount of hourly energy imbalances. (Staff brief at 48)

NewEnergy asserts that ComEd’s load shaping/price shaping adjustment for off-peak prices fails to properly account for load uncertainty. NewEnergy states that ComEd’s methodology is a simple weighted average – nothing more, nothing less. According to NewEnergy, the load shaping/price shaping adjustment is simply a mathematical exercise where historical price shapes and historical load shapes are assumed to be reflective of future price shapes and future load shapes. NewEnergy contends that such a methodology fails to reflect uncertainty and the results will only be reflective of serving actual retail customers if history mirrors itself exactly. NewEnergy argues that since ARES are required to schedule in good faith, on an hourly basis, ARES simply cannot comply with ComEd's scheduling requirement by relying upon historical hindsight, such as ComEd's price shaping/load shaping methodology. (NewEnergy brief at 41)

NewEnergy contends that when actual hourly prices and actual hourly loads deviate from expected or historical averages, the cost of shaping a wholesale block of power and energy will also deviate. Using a Block Sculpting methodology, NewEnergy presented an example of the costs incurred when actual hourly prices and actual hourly loads deviate from historical averages. NewEnergy contends that these examples illustrate that the premium to shape wholesale blocks will be greater than that produced by ComEd's method if price and demand are higher or lower than historical levels. According to NewEnergy, given the accepted high correlation between price and demand, the premium to shape wholesale power and energy will be higher unless history repeats itself. (Id. at 42-43)

NewEnergy argues that since ARES are required to schedule in good faith to its hourly forecast, there is an obvious inequity in that ComEd will not acknowledge any supply cost arising out of this scheduling requirement. According to NewEnergy, ComEd's methodology does not provide a reasonable proxy for the market value of power and energy and thus fails to comply with the Act. In its brief, NewEnergy requests that the Commission direct the utilities to utilize Black's Model, the Monte Carlo simulation, or refine the Zuraski Adjustment to include a database that consists of the past three summers in order to properly reflect hourly price and usage uncertainty. (Id. at 43)

In its brief on exceptions, NewEnergy recommends that the Commission require IP to modify and expand its load-weighted market value calculation to include the off-peak period. NewEnergy argues that by expanding its load-weighted market value calculation to reflect all 8760 hours of price data and load data within a year, as ComEd and Ameren have proposed, the results will provide better market price signals to all market participants and more accurately reflect the cost of serving retail load. (NewEnergy brief on exceptions, Attachment A at 15)

ComEd claims that its methodology fully accounts for the characteristics of power and energy as applied to retail load via the hourly load shape adjustment that is part of its methodology. ComEd argues that its use of 8,760 hourly class loads for each customer class properly defines the product dimension of load shape on an hour-by-hour basis and does so explicitly for each customer class. (ComEd brief at 28)

ComEd asserts that contrary to NewEnergy's suggestion, load shape does not depend on whether a sale of power and energy is "retail" or "wholesale." ComEd contends that retail and wholesale characteristics can vary a great deal, even among groups: some entities sell directly to both retail and wholesale customers; some own their own generation, while others do not; some are affiliated with entities that own their own generation, while others are not. According to ComEd, at both retail and wholesale, suppliers can have many different strategies for supplying load and managing costs. ComEd says that this is part of how different entities compete. (Id. at 29)

ComEd argues that to support its proposal, NewEnergy again relies on its assumption that a RES cannot comply with ComEd's requirement that it schedule in good faith on an hourly basis, simply ignoring the testimony of ComEd witness Naumann. ComEd contends that "Good Faith Hourly Schedules" require a RES only to generate a plan that helps "minimize" scheduling errors. According to ComEd, neither the Commission's rules nor the ComEd Open Access Implementation Plan require RESs to supply their load only with "load following service," let alone to match their actual load with their delivered supply in real time. (ComEd reply brief at 37)

According to ComEd, NewEnergy's example of the costs that could be incurred when actual hourly prices and loads deviate from historical usage (NewEnergy PRO-8 Tables 1 and 2) is not evidence, but speculation. ComEd claims that NewEnergy witness Bramschreiber admitted that the figures used by NewEnergy in its tables were not based on studies of actual market data, but were purely assumptions. (citing, Tr. at 521) ComEd also asserts that NewEnergy table PRO-8 misstated the ComEd methodology. (Id. at 38)

ComEd contends that since no evidence has been offered that ComEd's methodology is insufficient, no modification is appropriate. ComEd argues that to the extent NewEnergy's discussion of load shape was tied into a request for an uncertainty adjustment, an adjustment for uncertainty was shown to be inappropriate. ComEd's criticism of the Black and Monte Carlo models are discussed above in Section III.B.1 of this order. (ComEd brief at 29; reply brief at 38)

ComEd says that if the use of three years of data would, however, resolve all of NewEnergy's stated concerns with the MVI methodology, ComEd is willing to consider it as a settlement proposal and is willing to discuss this potential adjustment in that context with NewEnergy, Staff and the AG. (ComEd reply brief at 38)

Illinois Power asserts that to extend the PJM adjustment to all 8760 hours in the year is not simply a calculation exercise. IP says that it uses the PJM shaped prices to not only calculate customer transition charge amounts, but also to calculate customer bills under Rider PPO which is an entirely different situation than for ComEd and Ameren. IP claims that using the same values for both purposes is required by Section 16-110(b) of the Act. IP states that to extend the PJM shaping for transition charge purposes means an extension for PPO pricing purposes as well. IP contends that such a matching of data insures that the savings a customer expects are realized. (IP brief at 25-26)

IP claims that if all hours are shaped and used, the customer's monthly PPO bill could end up with about 730 hours of market prices multiplied by the hourly usage, adding additional complexity for customers when they attempt to understand their bills. IP also contends that this would also require a substantial amount of systems re-work by IP for little value since the off-peak prices are not that volatile in the first place. (Id. at 26)

IP states that it is not willing to change its load shaping adjustment methodology or adjust its off-peak values due to the type of data used in energy pricing. IP further states that it is not willing to adjust its market values for optionality costs. (IP brief at 4)

As noted above, **Staff** states that the original and modified load-shaping methodologies basically superimpose hourly price shapes on otherwise fixed monthly wholesale block prices. Staff asserts that they are not designed to account for all other costs of retail "load-following" or of reducing to some acceptable level the amount of hourly energy imbalances. (Staff brief at 48)

Staff states that notwithstanding the testimony provided by NewEnergy indicating a potentially higher cost associated with load following, the load shaping adjustment proposed in this case by ComEd and Ameren are steps in the right direction and are reasonable, in and of themselves, as a methodology for superimposing hourly price shapes on otherwise fixed monthly wholesale block prices. According to Staff, that does not invalidate additional adjustments to account for other factors impinging on RES costs and actual market prices charged to retail consumers by RESs like NewEnergy. Staff indicates that some or all of NewEnergy's alleged higher costs may be due to the load-following related "optionality" factor. Staff contends that the difficulty is not so much with the theory that market values may be higher than those being computed by Ameren and ComEd (as well as IP), but with the lack of clear and unambiguous empirical evidence to that effect and the lack of a clear and unambiguous method for making the indicated adjustment. (Id. at 48-49)

Staff recommends that the Commission approve the ComEd/Ameren refinement to the original load-shaping adjustment that was ordered into effect by the Commission in previous delivery service tariff cases. (Id. at 49)

3. Energy Imbalance Adjustment

Imbalance charges may be described as the charges a supplier incurs when the amount of energy consumed by a customer does not match the amount scheduled for that customer. It is asserted by some parties that energy imbalance charges are costs incurred by RESs to supply power and energy to retail customers, but that the incumbent utilities effectively do not pass such costs on to PPO customers. CILCO and NewEnergy recommend that the market value for power and energy be adjusted upward to reflect energy imbalance costs. Unicom recommends that imbalance charges be captured and assessed against delivery services customers as a cost of transmission service.

CILCO witness Munson reports that in previous delivery services proceedings the Commission concluded that imbalance revenue is a delivery service revenue and the appropriate place to account for it is in the delivery services revenue as opposed to market value. Ms. Munson recommends that the Commission reconsider this position given the proposals to move from an NFF to a market index market value. She argues that imbalance charges are a real expense incurred by suppliers which should be added to market value as opposed to delivery services revenue. Ms. Munson contends that imbalance costs are not accounted for in a published market index as they would, or should, be in an actual contract between a supplier and retail customer that the NFF would summarize. (CILCO Ex. 3.0 at 3-4) CILCO made no specific proposal to adjust market value to reflect imbalance costs.

Unicom witness Braun expressed concern that the PPO products currently offered do not properly capture imbalance costs and credits, and pass those charges or credits on to the customers. He states that each utility's Open Access Transmission Tariff ("OATT") contains an imbalance mechanism that reconciles scheduled with actual energy or capacity usage for all buyers of electricity. Mr. Braun indicates that the imbalance credit or debit reflects the utility or control area operator's cost for balancing the system. (Unicom Ex. 1.0 at 9)

Mr. Braun asserts that the PPO does not reflect these costs or credits on an individual basis. He claims that imbalance charges are recognized by ComEd and rolled into existing rates on an annual basis. He says that as a result, imbalance costs are socialized across all customers and are not properly allocated to PPO customers. Mr. Braun contends that each ARES must pay imbalance charges to the utility or control area operator, but it must compete against a product that effectively offers imbalance insurance for free. (Id.)

Mr. Braun did not propose a specific solution to resolve this issue. He suggests that this issue could be resolved in a workshop or other process that would incorporate the views of others. Mr. Braun stated that this is an issue that would benefit from collaborative discussion. Mr. Braun said he is not suggesting that there be an adjustment to the market value of energy of any sort. Instead, he believes that imbalance charges can be captured and assessed as a cost of transmission service just as other costs are captured and assessed against delivery services and PPO customers. (Unicom Ex. 1.0 at 10)

Unicom states that ComEd's PPO customers pay a fixed amount, buried within their transmission charges, that purports to represent the imbalance penalties that PPO customers have precipitated. According to Unicom, the amount, approximately $40,000 per year for all PPO customers, is based on 1997 test year data. Unicom states that this 1997 data pre-dates open access in Illinois, and pre-dates the time that any entity had to forecast and schedule for relatively small retail access loads. Unicom argues that this data has no relationship whatsoever to the actual energy imbalance of current PPO customers. (Unicom brief at 9-10)

Unicom contends that while ARES and their customers are exposed to highly volatile hourly Energy Imbalance costs, credits, and penalties for scheduling errors, PPO customers are effectively insulated from the volatility risk. (Id. at 10)

In response to ComEd's suggestion that ARES can select any number of ways to pass on Energy Imbalance Costs or Credits, Unicom contends that no matter how ARES design or structure their products, they cannot compete against a free service. (Id. at 11)

Unicom reports that Staff says "it is immaterial whether the net revenue from Energy Imbalance Service is accounted for as a component of delivery service charges or as a component of the market value when its is included as a credit within the transition charge" and that it is "almost as immaterial whether the transition charge adjustment for these net revenues is performed every year or once per delivery services rate case." (Id., citing Staff brief at 34) Unicom asserts that Staff might be correct if one were applying traditional utility economics and rate principles because under those principles, the operative question is whether the utility is recovering its costs of service. Unicom argues that because the PPO subsidizes risk insurance for Energy Imbalance Service, it impairs rather than promotes competition. Unicom asserts that it is no longer enough to say that the PPO meets the traditional rate principles; rather, what must be asked is whether and how it affects competition. (Unicom reply brief at 2)

Unicom asserts that if imbalance credits and charges will net to zero as ComEd and IP suggest, they should not resist passing them on to customers. According to Unicom, the simple solution is to assess the customer with the costs and credits that the customer incurs. If the costs and credits will net to zero, Unicom claims the utility and the customer should not care. (Unicom reply brief at 3)

Contrary to the arguments of ComEd and Staff, Unicom contends that the manner in which Energy Imbalance Service costs or credits are assessed under ComEd's PPO is a delivery services issue that can be considered in the instant proceeding. Unicom reports that ComEd has filed a petition seeking an order "under Article IX and Section 16-112 of the Act approving the implementation of tariffs, to be effective May 1, 2000, incorporating an alternative 'market based' methodology which would replace the NFF's market value determinations for ComEd's delivery services customers." (Id., citing ComEd brief at 2) Unicom states that among the tariffs for which ComEd sought approval was ComEd's new Rider PPO (Market Index). Unicom asserts that the PPO (Market Index) tariff is clearly at issue in this proceeding and Unicom is unaware of any procedural rule or law that would prevent the Commission in this proceeding from recommending the changes that Unicom proposes. (Unicom reply brief at 3-4)

In its brief, Unicom discussed, in detail, ComEd's OATT, and recommended that the Commission direct ComEd to take certain actions based on that tariff. (Unicom brief at 7-11) However, Unicom does not assert that ComEd's OATT has been included in the record of this proceeding. Further, as noted above, Unicom's witness did not make a specific proposal to resolve this issue, and in fact he suggested the issue could be resolved in a workshop or other process that would incorporate the views of others. On this point, the Commission finds that the proposal in Unicom's brief, and the tariff on which it relies, are not part of the evidentiary record in this proceeding.

In its brief on exceptions, Unicom recommends that the Commission ignore the fact that ComEd's OATT was never offered into evidence and that no party requested that the Commission or hearing examiner take administrative notice of ComEd's OATT under the procedures required by 83 Illinois Administrative Code 200.640. (Unicom brief on exceptions at 3-5 and Exhibit A at 81 and 129) In the alternative, if the Commission rejects Unicom's primary recommendation, Unicom's brief on exceptions recommends that the Commission direct Staff to initiate workshops on this issue by February 15, 2001 and conclude such workshops by February 28, 2001. Unicom's brief on exceptions suggests that the workshops be followed by appropriate hearings and process, conducted in a manner and within a time frame to permit a final Commission order on this issue by no later than April 1, 2001. (Unicom brief on exceptions at 5 and Exhibit A at 129) Finally, Unicom's brief on exceptions suggests that the order should discuss the burden of persuasion under Article IX of the Act. (Unicom brief on exceptions at 4 and Exhibit A at 28)

NewEnergy witnesses O'Connor and Bramschreiber state that imbalance charges are real expenses which should be added to market value in order to reflect the true cost of serving retail customers. They state that CILCO witness Munson is correct in asking the Commission to reconsider the inclusion of imbalance costs in the market value if the utility moves from an NFF to a market index market value. (NewEnergy Ex. 2.0 at 16; NewEnergy brief on exceptions, Attachment A at 16)

The NewEnergy witnesses contend that at a minimum, imbalance costs should be included on PPO customers' invoices as part of the transmission and transmission ancillary services line item charge. They say the calculation of imbalance costs can be based on a utility estimate moving forward or, preferably, based on monthly actuals. They claim that to embed imbalance costs within the PPO service is a conscious under-pricing of that service versus alternate suppler service. (NewEnergy Ex. 2.0 at 17; reply brief on exceptions at 16-17)

According to NewEnergy, customers presently taking service under the utilities' respective PPO programs are shielded from scheduling and technical requirements as well as any resulting imbalance costs. NewEnergy asserts that ComEd simply bills PPO customers on their metered usage and "eats" any imbalance costs. NewEnergy argues that by excluding imbalance costs from the PPO service, ComEd consciously under-prices that service. (NewEnergy brief at 33, brief on exceptions at 16-18 and Attachment A at 17-18) According to NewEnergy, ComEd is financially indifferent to this conscious under pricing of the PPO, because it simply recovers this apparent shortfall under its transition charge tariffs. NewEnergy claims that the PPO is not a fixed priced product like those offered by other suppliers because any understatement of cost is simply recovered under the transition charge tariffs. NewEnergy argues that ARES are not in a similar position, and that any under pricing by ARES would result in lost margin. (NewEnergy brief at 33)

NewEnergy claims that ARES will have to purchase from imbalance service when prices are high and sell to imbalance service when prices are low. NewEnergy also contends that ComEd's financial analysis completely ignores a suppliers' cost of commodity supply. (Id., citing ComEd brief at 23; NewEnergy brief on exceptions, Attachment A at 16) NewEnergy says that under ComEd's analysis, a supplier who has overscheduled due to lower than expected demand is somehow better off because of his hourly imbalance cashout credit. According to NewEnergy, this simply ignores the fact that the supplier overscheduled because demand was down and subsequent cashout charges likely will be down. (NewEnergy brief at 33; reply brief at 32-33)

In its brief on exceptions, NewEnergy recommends that the utilities revise their PPO invoices to include the actual energy imbalance charges that the utilities incur. NewEnergy also recommends that the utilities file revisions to their PPO tariffs that would provide for a monthly positive or negative adjustment to delivery service charges for PPO customers to account for any difference between actual energy imbalance service costs (or revenues) and the costs currently embedded in delivery service rates. NewEnergy says that such filings should be made at the same time as the utilities file the revised MVI tariffs in compliance with the final order in the instant proceeding. (NewEnergy brief on exceptions at 17-18 and Attachment A at 18; reply brief on exceptions at 17) At a minimum, NewEnergy suggests that Staff initiate workshops in the fall of 2001 to address issues related to adjustments for energy imbalances. (NewEnergy brief on exceptions, Attachment A at 19; reply brief on exceptions at 17-18)

ComEd contends that the issue of energy imbalance costs is not properly before the Commission. ComEd asserts that this issue was resolved in Docket 99-0117, where the Commission recognized that the provision of energy imbalance service is a delivery service, and specifically rejected any adjustment to market value for energy imbalances. ComEd argues that attempts to relitigate this issue should be rejected. According to ComEd, no new evidence has been presented to warrant a departure from the Commission's prior decision. (ComEd brief at 23; reply brief at 31; brief on exceptions at 11; reply brief on exceptions at 17)

In response to NewEnergy and CILCO, ComEd asserts that PPO customers do pay for energy imbalance service, and that energy imbalance service does not always result in a net cost to a RES. (ComEd Ex. 9 at 13-14; ComEd Ex. 10 at 5-6) ComEd says that NewEnergy and CILCO simply ignore the fact that energy imbalance service can result in a credit rather than a cost. ComEd contends that the financial impact on a supplier for energy imbalance service is not always a net cost, and it is reasonable to assume that in the long run the imbalance payments tend to cancel each other out. ComEd argues that more importantly, to the extent that a RES's use of energy imbalance service results in a net charge, that means that the RES has not purchased all of its required energy from other suppliers, lowering its payments to them. (ComEd Ex. 10 at 5-6; ComEd brief at 24; reply brief at 32; brief on exceptions at 11; reply brief on exceptions at 11, 17)

ComEd states that customers are credited for energy imbalance service in the delivery service portion of the transition charge calculation, and PPO customers also pay for energy imbalance service. ComEd contends that all customers are treated fairly, whether they are served by a RES or through the PPO. ComEd asserts that to the extent that PPO customers' actual consumption of electricity differs from the amount scheduled, ComEd must separately procure energy imbalance service from the control area operator. ComEd says that under its Commission-approved PPO rate schedule, ComEd charges its PPO customers for all electricity they consume at the PPO price as well as a separate monthly charge for transmission service and ancillary transmission services. Through these items, ComEd contends, PPO customers pay the entire cost of energy imbalance service in their monthly bill. (ComEd Ex. 10 at 4-8; ComEd brief at 24; reply brief at 31; brief on exceptions at 11)

By way of further explanation, ComEd witnesses Crumrine and Nichols testified that ComEd charges its PPO customers based on the meter reading which includes both scheduled energy and an amount equal to energy imbalance bought or sold. They say PPO customers receive an energy imbalance charge or credit at the tariffed PPO prices. Messrs. Crumrine and Nichols assert that because ComEd charges its PPO customers for all electricity they consume, any energy charges, including charges for energy supplied to ComEd's PPO customers through Energy Imbalance Service, are recovered from PPO customers immediately in their next monthly bill and are billed at the full PPO energy charges. (ComEd Ex. 9.0 at 6-7)

Messrs. Crumrine and Nichols state that PPO customers also pay a separate monthly charge for transmission and ancillary transmission services. They report that line item contains the test year value for the net additional revenues that ComEd receives for energy imbalance above the cost of providing the electricity. They contend that between the two components, PPO customers pay the entire cost of energy imbalance in their monthly bill. (Id. at 7)

According to ComEd, a RES is free to recover these imbalance costs through monthly charges as ComEd does, or, unlike ComEd, by keeping a tally and passing on any net balance to their customers the next year. (ComEd Ex. 10 at 7) ComEd states that RESs could use these alternate rate designs, although NewEnergy and Unicom apparently do not. (ComEd reply brief at 32)

ComEd contends that no party has proposed, in the evidentiary record, an actual energy imbalance adjustment. ComEd says that while Unicom claims that it has "proposed a methodology for adjusting ComEd's PPO tariffs," it never described such a proposal in testimony, but only recommended workshops to consider the issue. According to ComEd, there is no proposal before the Commission that could be approved. (Id.)

According to **Illinois Power**, energy imbalance is not always a cost, and may in fact represent a credit to the ARES, a point that IP says the ARES ignore in arguing for an adjustment. (IP Ex. 2.8 at 2) IP asserts that energy imbalance is already handled in the price shaping adjustment. IP also contends that because imbalance is based on the difference between scheduled load and actual load, while transition charges are based on the customer's historic usage (and not scheduled load), there is a mismatch in the ARES' proposals and IP's tariffs. IP says that any suggestion that it is somehow under-pricing PPO service due to imbalance is inaccurate. IP indicates that no party has pointed to any place where IP is not following its filed tariff on this issue. (IP Ex. 3.7 at 3; IP brief at 19-20; reply brief at 17)

IP also argues that the Commission has already decided the imbalance issue in the context of the delivery services cases and yet no party presents a single new piece of evidence in this case to warrant a departure from the Commission's prior decision. (IP brief at 19-20; reply brief at 17; reply brief on exceptions at 10)

IP also states that it is not willing to adjust market values for energy imbalance. (IP brief at 4)

Staff says that in its view, it is immaterial whether the net revenue from energy imbalance charges is accounted for as a component of delivery service charges or as a component of the market value when it is included as a credit within the transition charge. It is almost as immaterial, Staff claims, whether the transition charge adjustment for these net revenues is performed every year or once per delivery services rate case. In Staff's view, the Commission has already ruled on that issue in IP's and Ameren's delivery services proceedings, Dockets 99-0117, 99-0134 and 99-0121, and the issue is not directly tied to the use of a market index-based or an NFF-based transition charge tariff. Staff reports that Unicom witness Braun suggested that the details behind making an imbalance adjustment to the PPO rates could be worked out through Commission-sponsored workshops. Staff recommends that any proposals for additional energy imbalance adjustments should not be approved in the instant proceeding. (Staff brief at 32-34)

4. Planning Reserve Adjustment

It is asserted by some parties that because Ameren and IP require RESs to maintain a planning reserve as a condition for receiving transmission to serve retail load, the market value methodologies proposed by these utilities should be adjusted upward.

According to **NewEnergy**, under ComEd's proposed methodology, financially firm agreements such as those traded on the Altrade and Bloomberg electronic exchanges are permitted to serve as a designated resource (sometimes referred to as "marketer firm with liquidated damages"). NewEnergy states that the financially firm products that underlie ComEd's indices have the same level of reliability as ComEd's own native-load service. NewEnergy asserts that in contrast, Ameren and IP require suppliers to "point to iron on the ground" and designate a specific generation resource in order to have designated network transmission service (i.e., same level of firmness as native load firm). (NewEnergy Ex. 2.0 at 14-15; NewEnergy brief at 34)

NewEnergy recommends that the Ameren and IP market value index proposals be modified to include an adjustment for planning reserves and an adjustment for designating specific generation resources. NewEnergy claims that to foster the development of competition in Illinois, the Commission must recognize that reliability and quality of service are required by retail customers. According to NewEnergy, unless ARES can replicate the quality of native load service at the price reflected in the market value calculation, retail competition will not develop and customers will be left only with a choice between utility-provided bundled service and the utility-provided PPO service. NewEnergy states that it is obligated contractually to provide power and energy in a manner that would replicate native load service as provided by the utility today. NewEnergy contends that most customers will accept no less level of reliability and priority than they are accustomed to today. (NewEnergy brief at 34)

NewEnergy states that while Ameren and IP have made a distinction between financially firm versus native load firm, neither Ameren nor IP reflect that distinction in their market value calculations. NewEnergy asserts that even if an ARES could perfectly mimic the components of their index proposals, at the exact same market cost, the resulting ARES supply portfolio would not have the same level of firmness as the utility's native load. This "point to iron on the ground" requirement, NewEnergy argues, is one factor that is stifling competition in downstate Illinois. NewEnergy contends that such a requirement drastically limits supplier flexibility and significantly adds to the cost to serve retail customers, particularly during the summer months when transmission congestion is much more prevalent. NewEnergy argues that absent proper recognition of this additional cost in the market value calculation, suppliers will not be able to replicate the quality of native load service at the price reflected in the market value calculation. (Id. at 35)

To rely on financially firm on-peak products to establish market value, while holding such financially firm on-peak products to a lower level of firmness than native load, NewEnergy argues, is incongruous at best. According to NewEnergy, to comply with the Act, the Ameren and IP market index proposals need to reflect the differences between providing financially firm energy and unit specific energy. NewEnergy recommends that the Commission direct Ameren and IP to either remove the requirement that ARES "point to iron on the ground" or include a planning reserve adjustment. (Id.)

According to NewEnergy, the Commission should, as suggested by Staff, direct any utility that requires a reserve margin to account for such cost by upwardly adjusting its market index in manner consistent with that proposed by either Ameren or CILCO. (Id., citing Staff brief at 37.) NewEnergy says that Staff's proposed compromise is reasonable; however, NewEnergy asserts that CILCO's methodology is more appropriate for calculating the adjustment for the additional cost of providing a 15% planning reserve. (NewEnergy reply brief at 34)

CILCO asserts that IP and Ameren require retail suppliers to obtain planning reserves. CILCO claims that when it went through the process of applying for Network Integrated Transmission Service from Ameren and IP to serve retail customers, CILCO was required to contract for 15 percent additional capacity to meet the planning reserve requirements. (CILCO Ex. 1.0 at 3) CILCO contends that while the costs of the planning reserves would have been taken into account by retail suppliers when quoting a price to retail customers, market values reflected in firm energy only indices do not incorporate these costs. CILCO says that to account for the planning reserve requirements not reflected in the proposed indices, the market values provided by the indices for on peak periods should be adjusted upward by 15 percent. (CILCO brief at 4)

CILCO states that a planning reserve adjustment would not be required for ComEd's market value proposal, in that ComEd does not require planning reserves, but will accept marketer firm products to serve retail load in its territory via network transmission. CILCO contends that IP and Ameren could avoid the need for the adjustment by changing their current practices of requiring a 15 percent planning reserve and adopting the ComEd practice of accepting marketer firm products for network transmission. CILCO observes that Ameren was not opposed to the inclusion of a component in the market value that reflects the fact that Ameren requires retail electric suppliers and customer self managers to have a 15 percent reserve margin. (Id.)

According to CILCO, IP asserts planning reserves are not necessary because a RES can utilize point-to-point transmission service, and planning reserves are merely "suggested" for obtaining network transmission service to serve retail load its service territory. CILCO claims the evidence shows that network transmission is the preferred means for serving retail load, especially for a RES endeavoring to serve a group of customers such as school districts with facilities widely dispersed throughout a utility's service territory. CILCO's disputes the notion that the reference to planning reserves in Illinois Power's network transmission application was simply a helpful suggestion and not a prerequisite. (CILCO Ex. 2.0 at 1-5) CILCO contends that IP's witnesses' understanding of this issue was based upon second-hand knowledge. CILCO claims IP's witnesses were unable to explain the purpose of the reference in IP's network transmission application to MAIN's 17 to 20 percent planning reserve margin. CILCO says that these witness characterized reserves as an "obligation," and admitted IP differed from ComEd which did not have a similar "requirement." (CILCO reply brief at 3)

CILCO says IP contends a planning reserve adjustment is unwarranted because CILCO as a RES only had to buy 100 percent of its needs, "while the seller (Ameren) provided the reserves." (citing IP brief at 21) CILCO argues that Ameren undoubtedly charged CILCO a price that reflected the cost of providing the reserves, a fact that CILCO says IP witness candidly admitted. CILCO indicates it would prefer that IP would accept marketer firm products without additional planning reserve, as ComEd does. However, so long as planning reserves are required, CILCO asserts that the marketer firm products which make up the market value index proposed by IP do not reflect the market value of retail power that must include the cost of providing reserves. (CILCO reply brief at 3-4)

CILCO also responds to what it refers to as a claim by IP that a planning reserve adjustment would constitute double counting because in failing to object to IP's proposal to set non-firm prices by dividing the firm number by a factor of 1.15, the parties implicitly recognized the proposed index includes a reserve factor. CILCO says it does not object to a non-firm price being reduce by dividing the firm price by 1.15, if the firm price actually reflects the requirement to provide planning reserves. CILCO states that its objection is that the firm price based on the proposed index does not include the reserve requirement. (Id.)

In its brief on exceptions, CILCO asserts that the proposed order erred by proposing a static $0.61 adjustment rather than the 15 percent adder CILCO claims it supported. According to CILCO, the testimony cited in the proposed order was merely an example of how the 15 percent adder would be applied. CILCO indicates that the $0.61 was calculated by taking 15 percent of $4.07. CILCO asserts that the static $0.61 adjustment will be far less that the cost of providing a 15 percent planning reserve during times when the market index is significantly greater than $4.07 per megawatt-hour. (CILCO brief on exceptions at 2-3)

In its brief on exceptions, CILCO also asserts that the proposed order erred in accepting Ameren's proposal to increase the market value by the amount taken from its

OATT Schedule 4A. CILCO contends that the OATT charge applies only when Ameren incurs a net under delivery and even then under limited circumstances. CILCO says it has not been convinced that these limited charges can be equated to a constant, around the clock, additional 15 percent cost of securing planning reserve for the network transmission service needed to supply retail customers. CILCO argues that planning reserves are not obtained only for the limited occurrences in a month that trigger the OATT Schedule 4A charges, but rather must be secured in advance for every hour of every day. (CILCO brief on exceptions at 2-3)

According to **Staff**, IP says that while the utility may believe the planning requirement is appropriate to help ensure system reliability, it does not require the planning reserve for the purposes of providing transmission service to a customer. Staff indicates that as support for the proposition that no adjustment for planning reserves is necessary, IP distinguishes that the "seller" is required to hold a 15% reserve but the buyer is not required to hold a 15% reserve. (Staff brief at 35-36)

Staff argues that for IP's assertion to be relevant to determining the accuracy of IP's proposed index, it must also be true that the firm on-peak power traded on Altrade and Bloomberg Powermatch involves sellers who are in fact holding 15% reserve margins on top of the contract quantities being traded. Otherwise, Staff contends, it is still necessary to adjust the market index to account for the cost of maintaining a 15% reserve margin, whether it is arranged by the buyer or the seller. Staff argues that nothing in the record suggests that sellers on Altrade or Bloomberg Powermatch, from which IP and Ameren draw on-peak price data for their market index tariffs, are in fact carrying 15% reserve margins on sales at the Into-Cinergy hub. (Id.)

Staff observes that Ameren agreed an adjustment for planning reserves would be appropriate and suggested a methodology for implementing an adjustment. (Id. at 35) According to Staff, either a planning reserve requirement is just and reasonable (Ameren's view) or it is not (IP's view), depending on whether the Altrade and Bloomberg Powermatch prices exclude or include, respectively, a component for reserve margin costs. Staff states that notwithstanding the possibility that IP will refuse to implement its market index as a result, Staff proposes that the Commission find (A) that any utility that requires a reserve margin as a condition for providing transmission service to a RES is causing an increase in the cost of providing retail service and (B) that such an increase in cost should be accounted for through an upward adjustment in the utility's market index, consistent with the approaches proposed by Ameren witness Hock or by CILCO witness Lancaster. (Id. at 37)

Staff asserts that the simpler method offered in CILCO's brief for making a planning reserve adjustment is inconsistent with both methods discussed in the record by CILCO and Ameren witnesses. In any event, Staff continues to recommend that Ameren and IP be required to accept a planning reserve adjustment as a condition of approving their market index tariffs. (Staff reply brief at 6)

Ameren indicates that it is not opposed to the inclusion of a component in the market value that reflects the fact that Ameren requires RES and customer self-mangers ("CSMs") to have a 15% reserve margin. Ameren says that under its recently filed Open Access Transmission Tariff ("OATT") Schedule 4A, reserve capacity is available from Ameren on a daily basis to RES supplying retail load. Ameren proposed that the pricing for this component of the market value be taken from Ameren's OATT Schedule 4A. Ameren states that using the pricing and methodology specified in Schedule 4A, the Period A MVs that Ameren has previously submitted would be modified accordingly. (Ameren Ex. 5.0 at 7; Ameren brief at 11)

Illinois Power claims the basis for CILCO's assertion that IP requires the retail supplier to obtain planning reserves, IP's Network Integrated Transmission Service Application, when properly understood, actually provides no basis for such a planning reserve adjustment. (IP brief at 20)

IP argues that transmission service is not at issue in this case; rather, market values for power and energy are. According to IP, even if transmission requirements and costs were relevant, CILCO admits this topic is a non-issue with respect to point-to-point transmission service. IP contends that even with respect to network service, IP's Network Integrated Transmission Service Application states "MAIN currently suggests a 17 - 20% planning reserve margin of each year's maximum demand projection." (IP Ex. 2.6 at 7) IP states that it does believes planning requirements help ensure system reliability, but the fact that it points out a suggestion made by MAIN on this topic is hardly evidence that IP requires such a reserve by an ARES. (IP brief at 21)

CILCO further confuses the issue, IP claims, by pointing to a conversation with an IP representative and a contract CILCO signed with Ameren. According to IP, even assuming CILCO's characterization of these events is accurate, they do not undercut the validity of IP's position. IP contends that the conversation bolsters its point that the ARES is not the party who must provide an additional 15% reserve; rather, it is the seller of the wholesale block of energy. IP argues that the Ameren contract essentially proves the point: that the buyer, CILCO, had only to buy 100% of its needs, while the seller, Ameren, provided the reserves. (Id.)

IP states that in setting its non-firm energy price, IP divides the firm number by a factor 1.15. By removing the planning reserve value from firm prices, IP asserts that all parties should also recognize that the firm price implicitly includes any planning reserve value and that an additional adjustment for this factor would be a double count. (Id.)

IP asserts that Staff apparently has failed to see the linkage between the arguments made on this issue and the fact that there is "no evidence" that "questioned the use of [IP's] procedure" for adjusting firm market values to non-firm values. IP says that the firm to non-firm adjustment (firm is reduced by 15% to obtain non-firm values) is made in recognition that the firm values already adequately account for the 15%

planning reserve adjustment now argued for by Staff and others. IP claims that because the value of planning reserves are already reflected in the firm numbers, a second adjustment (to add it in again on top of the firm values) is a clear double count and is inappropriate. IP claims that Staff's argument that there is nothing in the record to suggest that sellers on the electronic exchanges carry reserves is factually inaccurate. (Id., citing Staff brief at 36) IP claims it presented evidence that "[t]he supplier of Firm Energy [as traded on the exchanges] must maintain either an operational or financial reserve to protect against the loss of generation or transmission service." (IP reply brief at 17-18; citing IP Ex. 2.6 at 9)

IP states that with respect to its deal with Ameren, CILCO purchased only 100% of its needs, not 115%. IP claims any additional planning reserve adjustment is unnecessary because it is already included in the firm price charged by Ameren, just as it is already embedded in the Into-Cinergy prices used by IP. (IP reply brief at 19)

IP asserts that the fact "NewEnergy is obligated contractually to provide power and energy in a manner that would replicate native load service" is irrelevant. IP says that there is no evidence to support the assertion that a requirement to point to iron on the ground "is stifling competition in downstate Illinois." IP claims the proponents of this adjustment nowhere refute two simple points made by IP. First, IP asserts there is no evidence that the price for Firm Energy (as traded on, or reported in, the data sources used by IP) is lower than the price for Native Load or System Firm power. Second, IP asserts that the evidence is that the financial value of Firm Energy is higher than the value for the latter two forms. IP contends that while the physical characteristics of various forms may differ, this case is about value not physical characteristics. Finally, IP says the proposals made by NewEnergy suffer from the same lack of specificity as many other proposals in this case. On this point, IP asserts, nowhere does NewEnergy provide the details needed to implement its proposals in a fair and impartial manner. (IP reply brief at 19-20)

As with a number of other issues in this proceeding, IP states that it is not willing to adjust market values for planning reserve. (IP brief at 4)

In its brief on exceptions, IP argues that a reserve adjustment is unwarranted and is a clear "double count" of that factor. (IP brief on exceptions at 7-8) IP goes on to say that, in an effort to prevent the negation of the hard work of all parties in this case, it is willing to accept the $0.61/Mwh flat adder to firm values the proposed order adopted to reflect the cost of planning reserves. IP states that it cannot accept changing its FERC tariffs to permit financially firm contracts to have the same standing as physically firm deals in obtaining transmission. (IP brief on exceptions at 8) In the replacement language which it provided, IP recommends that the Commission eliminate the planning reserve adjustment adopted by the proposed order. (IP replacement language at 3)

In its reply brief on exceptions, IP notes, as discussed above, that CILCO took exception to the portion of the hearing examiner's proposed order that adopted CILCO's proposed planning reserve adjustment. In response, IP claims that based on CILCO's own example, there is no evidence to support an adjustment of 15% of the market value of energy. IP asserts that CILCO presents no methodology for arriving at the value of which 15% is then taken. IP concludes that CILCO's proposal should be rejected as ill-defined and unworkable. (IP reply brief on exceptions at 8-9)

In its reply brief on exceptions, the **AG** recommends that the Commission reject IP's proposed modification to the hearing examiner's proposed order regarding the reserve adjustment. The AG argues that the language in the hearing examiner's proposed order is consistent with the Act, which it says mandates that IP explicitly set forth all requirements and charges in its tariff. (AG reply brief on exceptions at 4)

5. Capacity Backed Adjustment

It has been suggested by some parties that because IP and Ameren require RESs to utilize "capacity-backed" resources, or "iron in the ground," as opposed to firm supply contracts with liquidated damages for non-performance, their market value methods understate the market value of power and energy. CILCO witness Lancaster asserts that a designated resource is required in the Ameren and IP territories to serve a non-interruptible retail customers. She states that the definition of a designated resource is that it must be a resource that is capacity-backed, firm energy, and is carrying reserves. (Tr. at 1109) She differentiates that the typical trading day that her company experiences trades energy-only products. (Tr. at 1107)

CILCO asserts that the IP and Ameren Network Integrated Transmission Service Applications require retail suppliers to point to specific units or system supply. CILCO argues that the higher costs to supply this capacity backed product would not be reflected in the marketer firm products which comprise the market value indices proposed by Ameren and IP. According to CILCO, based upon a typical commercial and industrial customer load profile for a calendar year, the cost of the energy-only component of a retail product was $35.12 per MW, and the actual additional cost to acquire a capacity backed product was $4.07 per MW. (CILCO Ex. 2.0 at 5; CILCO brief on exceptions at 4-5) In its brief, CILCO further recommends that to reflect the market value of capacity-backed retail products, the market value indices should be adjusted by $4.07 per MW initially, with a provision for annual review by the Commission to reflect any changes in the developing market for capacity. Also in its brief, CILCO claims that Ameren was not opposed to the inclusion of a component to reflect the "transmission requirement" of regulatory capacity in the Ameren tariffs; however, the testimony cited appears to reflect Ameren's statement that it does not object to a reserve adjustment. (See Ameren Ex. 5.0 at 7; Ameren brief at 11)

CILCO contends that IP erroneously claims no party presented evidence that there were higher costs to supply this capacity-backed product than reflected in the marketer firm products which comprise the proposed market value indices. CILCO says its witness presented testimony regarding the cost of the firm energy-only component of a retail product and the actual additional cost to acquire a capacity-backed product based upon a typical commercial and industrial customer load profile. (CILCO Ex. 2.0 at 5) CILCO argues that if the financially firm products reflected in IP's proposed indices really reflect the same value as firm capacity-backed products, one wonders why IP will not accept financially firm products to obtain network transmission.

CILCO also states that its proposed adjustment would not apply to ComEd because a capacity-backed product to serve retail customers is not required in ComEd's service territory, and IP could avoid the adjustment by adopting a practice similar to ComEd. (CILCO reply brief at 4-5; brief on exceptions at 4-5)

ComEd witnesses Crumrine and Nichols state that the forward prices used in the market index methodology are for firm power. They assert that while the price is stated in $/MWh, it is, like the NFF estimates, an "all-in" price that implicitly includes the cost of capacity that was historically separated and priced in $/MW in utility purchase and sales contracts. They claim that it is difficult to understand how a market index price that is noticeably higher than the NFF prices needs to be increased in order to compare to the claimed ability of the NFF process to capture market price. (ComEd Ex. 9.0 at 6)

According to ComEd, CILCO mischaracterizes the products used to develop the market value indices as "energy-only." ComEd asserts that all products used are for firm power, and thus their prices necessarily include capacity. ComEd contends that there is no difference in price for marketer firm and native load firm products. According to ComEd, CILCO failed to propose any specific capacity backed adjustment, therefore, there is no evidence to support any such adjustment. (ComEd brief at 25)

Illinois Power witnesses Messrs. Jones and Peters state that the on-peak portion of the index represents firm contracts with liquidated damages. They say that liquidated damages contracts, sometimes referred to as "Marketer Firm" or "Firm Energy," have become a standard trading product in the Midwest, and through the broker market and electronic exchanges. Messrs. Jones and Peters testified that Firm Energy refers to energy that will be provided to the customer unless there is a "force majeure" event. (IP Ex. 2.6 at 7-8)

Messrs. Jones and Peters state that if the energy is not delivered to the customer and there was not a force majeure event, the suppler is required to make the customer financially whole for the replacement cost the customer incurs as a result of the supplier's failure to deliver energy. They claim that failure of a transmission path is not deemed a force majeure event and the suppler is still required to deliver the energy via another transmission path. They conclude that the financial value of the Marketer

Firm energy is equal to or greater than the financial value of native Load power and energy. (IP Ex. 2.6 at 8)

In using Into-Cinergy forward contracts, IP contends it is already using firm contracts. IP asserts that no party has presented any evidence that the value of the "Marketer Firm" energy that forms the basis for the forwards contracts is less valuable than other forms of firm energy. IP contends that given the financial ramifications of failing to deliver Marketer Firm energy, the value of such energy is equal to or greater than the financial value of other forms of firm energy and power. (IP brief at 22)

IP states that while the physical characteristics of the various types of firm energy may differ, this case is not about those physical differences but rather about value. According to IP, because the value of Marketer Firm is the same as or higher than other forms of firm energy, a further upward adjustment is unwarranted. (Id.)

IP also states that it is not willing to adjust its market values for capacity-backed requirements. (IP brief at 4)

Staff says that the power traders among the parties (utilities and ARES, alike) did not present empirical evidence in support of their positions on this issue (showing the premiums, or lack thereof, extracted by the market for "iron in the ground"). (Staff brief at 39)

Staff contends that NewEnergy's concern may be all well and good, but it is clearly an aspect of transmission service provided under the utility's FERC-approved OATTs. Staff asserts that it is completely beyond the purview of the Commission. According to Staff, even if the Commission found the NewEnergy/CILCO theory that iron in the ground demands a market premium above the price of financially firm power sold on Altrade and Bloomberg Powermatch, there is no methodology in the record to make the corresponding correction to the IP and/or Ameren market index tariffs. Staff recommends that the Commission not make such an adjustment a condition of approval of the market indexes in this consolidated case. (Id.)

NewEnergy states that while both Ameren and IP have made a distinction between financially firm versus native load firm, neither Ameren nor IP reflect that distinction in their market value calculations. NewEnergy says that contrary to Staff's assertions, a remedy has been proposed in the instant proceeding to make the necessary adjustment to the Ameren and IP proposals. NewEnergy says the Commission should direct Ameren and IP to remove the requirement that ARES "point to iron in the ground." (NewEnergy reply brief at 35, citing NewEnergy brief at 32; NewEnergy brief on exceptions at 20 and Attachment A at 21) The Commission notes, however, that the comment in NewEnergy's initial brief at 32 is that "the Commission should direct Ameren and Illinois Power to either remove the requirement that ARES 'point to iron on the ground' or include a planning reserve adjustment," and this comment is actually included in the section of NewEnergy's brief entitled, "Planning Reserve Adjustment."

NewEnergy recommends, in the alternative, since a capacity market is emerging in Illinois with all the new generation that is being developed, the Commission should adopt CILCO's recommendation that Ameren and IP be required to secure that capacity themselves and offer the capacity to the ARES at that price or allow the ARES to go and secure the capacity themselves. (NewEnergy reply brief at 35; brief at 34, citing Tr. at 1081-1082; NewEnergy brief on exceptions at 20 and Attachment A at 21-22)

In its brief on exceptions, NewEnergy asserts that under each of the three market index proposals, even if an ARES could perfectly mimic the components of the market index proposals, at the exact same market cost, the resulting ARES supply portfolio would not have the same level of firmness as the utility's native load. NewEnergy further asserts, in its brief on exceptions, that the Ameren and Illinois Power "point to iron in the ground" requirement is one factor that is stifling competition in downstate Illinois. (NewEnergy brief on exceptions at 18-20 and Attachment A at 21)

In its reply brief on exceptions, NewEnergy requests that the Commission make the appropriate adjustments to the Ameren and IP proposals to properly reflect the capacity backed requirements. New Energy claims that without these adjustments, the market values will be understated, the transition charges will be overstated and competition will be non-existent in the IP and Ameren service territories. (NewEnergy reply brief on exceptions at 19)

6. Adjustment to Off-Peak Prices - - "Dump Sales"

It has been asserted by some parties that the historical off-peak prices in the utilities' market-index calculations do not reflect the true cost of acquiring power and energy to serve retail customers, but instead reflect the utilities' incremental cost of generating energy during off-peak periods.

The positions of the parties presented prior to reopening are described in subsection a. below. Positions presented on reopening are summarized in subsection b. below.

a. Positions of Parties Initially Presented in the Original Record

NewEnergy argues that while each of the utilities' market index proposals are intended to reflect the energy component, all fail to adequately reflect the power portion of this requirement when establishing off-peak forward prices. In its briefs, NewEnergy recommends that the Commission enter an Order directing the utilities to revise their off-peak methodologies to include an adjustment to include the capacity costs associated with off-peak transactions. (NewEnergy brief at 37; reply brief at 36; BOE on reopening, Attachment A at 15)

NewEnergy states that each market index proposal has relied on historical day-ahead spot transactions for establishing off-peak forward prices. NewEnergy contends that such transactions, sometimes referred to as "dump sales," do not adequately reflect the value of power associated with multi-day or longer-term transactions. (NewEnergy brief at 37 and 26; reply brief at 36; BOE on reopening, Attachment A at 15)

According to NewEnergy, ComEd has offered no documentation to support its assertion that the average of 1x8 day-ahead spot transactions is reflective of multi-day firm transactions extending one week, let alone for all weekdays in a month. NewEnergy claims that its experience with purchasing electric power and energy in the Into ComEd retail market established the value of multi-day off-peak blocks in the $15 to $18 per megawatt-hour range, not the $11 t $15 per megawatt-hour range resulting from ComEd's methodology. According to NewEnergy, ComEd did not disclose the actual prices associated with those transactions, but instead devised an arbitrary and meaningless calculation purportedly transforming 1x8 blocks into 5x8 blocks, then admitted that it did not make sales at the resulting prices. NewEnergy contends that ComEd's proposal for off-peak values neither reflects the value at which the utility sells retail electric power and energy, nor reflects the value at which retail customers buy electric power and energy and, therefore, does not comply with the Act. (NewEnergy brief at 37-38 and 23-25; reply brief at 36-37) NewEnergy recommends that the Commission ignore ComEd's "imaginary" figures and instead look to the real figures that were provided by NewEnergy. (NewEnergy reply brief at 38)

NewEnergy asserts that rather than produce any evidence of its own transactions in support of its proposal, ComEd resorts to extracting statements from NewEnergy's witnesses out of context in order to distract the Commission from the record evidence in the instant proceeding. (Id., citing ComEd brief at 25-27) NewEnergy contends that ComEd mischaracterizes the testimony of NewEnergy's witness regarding the length of time that customers are allowed to switch suppliers. According to NewEnergy, what ComEd neglects to acknowledge is that NewEnergy is the only party to the instant proceeding that provided any factual evidence on this issue. (Id. at 37)

NewEnergy states that Section 16-112(a) requires that any index be "applicable to the market in which the utility sells and the customers in its service territory buy electric power and energy." According to NewEnergy, on many regular weekdays there are simply no 1x8 off-peak spot transactions reported. NewEnergy asserts that ComEd witness Huntowski admitted that such transactions only are reported on 75% of the regular workdays. The lack of any transactions on 25% of the days, NewEnergy contends, is a clear indication that customers do not buy electric power and energy based upon such an index. With the exception of certain uses such as street lighting, NewEnergy asserts that retail customers use electricity each hour of every day. NewEnergy concludes that the use of prices arising from the "dump sale" methodology is contrary to the Act. (NewEnergy brief at 39-40 and 23-24; reply brief at 38; brief on exceptions at 9 and Attachment A at 23)

According to NewEnergy, this lack of daily transactions highlights two shortcomings with ComEd's dump sale methodology. First, NewEnergy argues, ComEd's ability to resell freed-up power and energy resulting from the conversion of customers for at least one month is not reflected. Second, NewEnergy contends, ComEd's methodology incorporates a type of transaction that ARES cannot reasonably obtain to serve their retail customers and still comply with the good faith scheduling requirement. NewEnergy asserts that the result of these two shortcomings is that the 1x8 off-peak spot transactions are not an accurate reflection of the value of the electric power and energy that the utility sells, and its customers buy, and therefore does not comply with the Act. (NewEnergy brief at 40; reply brief at 39)

NewEnergy says that it provided the Commission with an alternative mechanism, recommending that the Commission order the utilities to calculate off-peak forward prices through the broker market. Specifically, NewEnergy suggested that this could be done by gathering broker quotes (five separate quotes, for example) for around-the-clock power and energy, as well as quotes for monthly 5x16 on-peak power and energy blocks. NewEnergy says that the volume-weighted difference between the two quotes could be calculated to determine the implied market value of off-peak power and energy. NewEnergy requests that the Commission adjust the historical off-peak prices in the utilities' market-index calculations to properly reflect the true cost of this supply component inherent in serving retail customers. (NewEnergy brief at 40-41; reply brief at 39)

In its brief on exceptions, NewEnergy asserts that the term "capacity cost" would include the cost premium which sellers of term off-peak energy would need to charge to compensate for assuming the price and availability risk inherent in forward transactions. NewEnergy contends that buyers of term off-peak energy products would pay a premium to hedge against price and availability risk inherent in daily transactions. NewEnergy claims that it is the ability of sellers of forward off-peak energy to mitigate price and availability risks, and the need of buyers to mitigate these risks, that form some of the basis for trading of longer term energy products. (NewEnergy brief on exceptions, Attachment A at 23)

In its exceptions, NewEnergy appears to acknowledge, at least to some extent, that the record does not support adopting its recommend adjustment to off-peak prices; however, NewEnergy's brief on exceptions recommends an adjustment to the utility's data hierarchies to reflect the "actual" value of off-peak power and energy. Specifically, NewEnergy recommends, in its brief on exceptions, that the Commission require the utilities to revise their MVI tariffs to include within the utilities' daily average off-peak methodology (i) multi-day off-peak transactions (overnight hours), and (ii) in the absence of such multi-day transactions, use of day-ahead spot transactions. NewEnergy's brief on exceptions contends that such an adjustment of the data hierarchy is necessary to ensure that the market values properly reflect the value of the freed up power and energy. (NewEnergy brief on exceptions at 12-13 and Attachment A at 24) In the alternative, NewEnergy's brief on exceptions recommends that the Commission use broker quotes, asserting that this methodology was used in Texas to establish market values in electricity when accurate indices are unavailable. (NewEnergy brief on exceptions, Attachment A at 25)

According to **ComEd**, NewEnergy's argument rests on the flawed assumption that spot prices are generally lower than forward prices, an assumption, ComEd contends, that even NewEnergy's witness contradicted at the hearing. ComEd states that Midwest spot prices were hundreds of times the incremental cost of generation last summer. ComEd argues that if NewEnergy truly believed that off-peak prices were always lower than forward prices, it would always buy on the spot market and would not buy off-peak supplies in monthly blocks, as they do. (ComEd brief at 26; reply brief at 33-34; brief on exceptions at 10; reply brief on exceptions at 5)

ComEd also contends that NewEnergy's assumption that it, or a RES, cannot purchase or rely on spot purchases for scheduling purposes, is incorrect. ComEd asserts that, although NewEnergy does not participate in the hourly markets and has instead entered into fixed price contracts, NewEnergy could readily have satisfied its obligations through the spot market. According to ComEd, the commodity acquisition and portfolio management strategy of one particular supplier should not be used to invalidate what is otherwise an appropriate method which accurately calculates market value in the off-peak period. ComEd also claims that RESs do not need to submit a schedule that necessarily varies every hour or that reflects the purchase of hourly load-following service each and every hour, or to modify that schedule as each hour approaches. ComEd argues that, contrary to NewEnergy's assumption, ComEd's tariff permits the use of spot transactions. (ComEd brief at 26-27; reply brief at 36; reply brief on exceptions at 6)

According to ComEd, NewEnergy's argument that it is inappropriate to use day ahead spot prices because the minimum period for which customers can shift from the utility until they need to come back is one month was thoroughly discredited in testimony given at the hearing. ComEd says that during cross-examination, NewEnergy witness Kagan abandoned any argument "that the only transactions that one should examine in setting market value are those that correspond to the period during which the customer is going to be gone." ComEd asserts that NewEnergy also admitted that even if there was a minimum one month requirement in the past, as of October 1, 2000, the minimum one month requirement is no longer operative. (ComEd brief at 27; reply brief at 35-36)

ComEd states that contrary to NewEnergy's assertion that it "is the only party to the instant proceeding that has provided any factual evidence on this issue," NewEnergy has done nothing more than rely on “broker quotes,” which were not actual quotes, for its claim that there is better data available, ignoring the fact that numerous witnesses—including NewEnergy’s own—contradicted NewEnergy’s market value assumptions. (ComEd reply brief at 33-34)

In ComEd’s view, NewEnergy’s claim that it presented "unrefuted evidence" that ComEd does not sell 5x8 off-peak blocks in the $11.00 to $15.00 range, by virtue of the fact that NewEnergy buys such blocks at higher prices, misrepresents the record. ComEd claims that there is no evidence that this "product" is regularly sold in the market. According to ComEd, the only "evidence" on which NewEnergy ultimately relied was a "broker quote" that was not an actual quote. (Id.; ComEd reply brief on exceptions at 5-6)

ComEd contends that NewEnergy’s assertions that "Edison refused to produce the data that would either confirm or deny" sales of 5x8 off-peak block transactions and that "Edison chose to suppress any documentation in support of its assertion that it sells 5x8 off-peak blocks" are also incorrect. ComEd asserts that counsel for NewEnergy read ComEd’s data request response into the record at the hearing. ComEd says a review of the record will confirm that the response does not support NewEnergy’s argument. (ComEd reply brief at 35, citing Tr. at 1021-1025)

According to ComEd, NewEnergy’s statement that "Edison witness Crumrine/Nichols admitted that other markets exist from which more accurate data could be extracted" is not supported by the testimony NewEnergy cites. ComEd asserts that neither Mr. Crumrine nor Mr. Nichols testified that other markets would produce "more accurate data"; rather, all they said was that alternate sources for gathering data may contain some data regarding market value. (Id. citing Tr. at 953; ComEd reply brief on exceptions at 6-7) ComEd contends that neither witness stated that their wholesale group uses any of these sources.

NewEnergy’s suggestion that off-peak prices should be determined utilizing forward broker price quotes instead of historical spot prices is unsupported and unworkable, according to ComEd. ComEd argues that NewEnergy does not specify anywhere which brokers should be contacted, who would contact the brokers, how many brokers would respond and detail transactions, or how to exclude particular transactions that are not appropriate. (ComEd brief at 27-28, reply brief at 25-26 and 36-37)

In its reply brief on exceptions, ComEd responds to the proposal in NewEnergy’s brief on exception that the Commission use the broker quotes methodology allegedly adopted by the Texas Public Utilities Commission. According to ComEd, NewEnergy’s statement does not present or support an alternative methodology. ComEd contends that by NewEnergy’s own representation, it is citing a system developed for “setting the market value for natural gas prices.” (ComEd reply brief on exceptions at 7, citing Motion for Additional Hearing of NewEnergy at 10) ComEd asserts that there is no showing in NewEnergy's brief or anywhere in the record that the Texas system for natural gas pricing would have any relevance to determine electricity pricing in Illinois.

Illinois Power comments on what it refers to as NewEnergy presentation of reasons as to why the day-ahead price may be lower than a longer-term price for off-peak energy. IP argues that these reasons will prove true some of the time and the day-ahead price may be lower than a longer-term price. IP contends, however, that there are also several reasons that the day-ahead price may be higher than a longer-term price. IP asserts that without better evidence that day-ahead prices are in fact lower than longer-term prices on a net basis, no adjustment is warranted. (IP brief at 23-24)

According to IP, nothing in the requirement that all parties use good-faith scheduling makes day-ahead pricing inappropriate. IP claims that this argument was raised with respect to ComEd and, therefore, there is no IP specific evidence regarding it. Nonetheless, IP argues that an ARES can buy power in the spot market either hourly or several hours or whatever to meet its load estimate. (Id. at 24)

IP contends that NewEnergy's proposal to include a capacity factor for off-peak power based on broker sheets ignores the fact that capacity values are primarily embedded within the high demand, high volatility periods more typical of on-peak periods. According to IP, any attempt to alter this market dynamic would be countered by other willing sellers who would not seek a capacity adder. (Id.)

IP also asserts that NewEnergy has not described the process for implementing its proposal such as how broker sheet prices would be obtained and from which brokers; who would verify that higher or lower prices were not obtainable from other sources; and what would happen if no brokers were willing to permit their sheets to be used for this process or to be audited. IP claims that such a nebulous concept cannot be implemented without causing more problems and disagreements than it resolves. (Id.)

IP further states that it is not willing to change its load shaping adjustment methodology or adjust its off-peak values due to the type of data used in pricing that energy. (IP brief at 4)

According to **Staff**, the main problem with NewEnergy's proposal is the lack of "transparency" associated with the recommended procedure. Staff says that while the utilities' proposed market indexes employ published off-peak information available to the public, NewEnergy's approach would depend on somebody's calls to brokers. Staff also contends that NewEnergy's proposal lacks the necessary specificity to put it into operation at the conclusion of this docket. Staff argues that even if such a method were determined to be desirable, the record in this case lacks the details needed for the Commission to implement an alternative method for deriving off-peak price inputs that is based on broker quotes. (Staff brief at 40-41)

In addition to the practical problems of implementing NewEnergy's proposed alternative to gathering off-peak price data for the market indexes, Staff asserts that the need to avoid "dump energy" sales has not been established. According to Staff, it is important to remember that the utilities' proposed indexes do not simply take a few unrepresentative days of off-peak price information. Staff indicates that they utilize data from an annual period. Staff argues that there is no reason to expect that the degree of "dumping" taking place during the observed annual period is any more or any less than the expected amount of off-peak dumping. (Id. at 41)

Staff contends that testimony in support of an adjustment to off-peak prices to eliminate an alleged downward bias in the historical spot prices reported by Power Markets Week was present in the record, but was relatively weak. Staff concludes that New Energy has not convincingly shown the need for an adjustment to off-peak prices, even if NewEnergy's recommended alternative methodology were shown to be practical. Staff further concludes that the NewEnergy alternative methodology is impractical and should not be made a condition for approving any of the utilities' market indexes. (Id. at 44)

Nicor did not file an initial brief in this proceeding and did not address this issue in its testimony; however, in its reply brief, Nicor supports NewEnergy's assertion that ComEd's methodology of averaging historical day-ahead spot transactions for a month yields artificially low market values. Nicor's reply brief recommends that the Commission enter an Order directing the utilities to revise their off-peak methodologies to include capacity and energy costs associated with serving retail customers, instead of transactions including only energy costs. (Nicor reply brief at 4)

b. Positions of the Parties on Reopening

According to **Staff,** one purpose of reopening was to allow for an examination by Staff and the AG of the utilities' records of their own off-peak power sales during the previous twelve months, and presumably to compare the prices of those sales to the off-peak price inputs utilized in the utilities' market index proposals. Accordingly, Staff and the AG examined the records of the utilities as they pertain to off-peak sales of electricity. With information gathered in response to a joint Staff/AG data request, Staff witness Zuraski compared the prices obtained by the utilities for their own power sales to the prices as reported in Power Markets Week Daily Price Report ("PMW"), the basic source of off-peak prices used within the proposed market index tariffs. (Staff brief on reopen at 2)

Staff reports that, in general, a sample of the ComEd prices was compared to off-peak prices reported in PMW. The results of Staff's examination of these data are contained in Staff Exhibit 8.1P. Staff says it reviewed three pages of transactions and the ComEd data showed a variety of contract periods. Staff states that since so much of the ComEd data reflected weekends, an attempt was made, on a case-by-case basis, to adjust for PMW's lack of weekend prices, using the hourly pricing available seven days a week from the PJM. (Staff brief on reopen at 2)

Staff reports that on average, the ComEd price exceeded the adjusted PMW price, while the unadjusted PMW price exceeded the ComEd price. Staff observed that ComEd witness Nichols testified that it is difficult to ascertain additional conclusions from the sample data analyzed. Staff also notes that Mr. Zuraski made no recommendations based on his findings. As such, Staff is not recommending that the Commission require ComEd to make any adjustment at this time. (Staff brief on reopen at 2)

Staff reports that all of the transactions it reviewed for IP in Southern MAIN were off-peak and that many were on the same day, at different times. According to Staff, these transactions were averaged, by day, leaving 2 days of purchases and 3 days of sales, all in January 2000. With so few transactions, Staff says there were few exact date matches with the PMW data. Hence, rather than produce a numerical comparison, Staff indicates that a chart was prepared showing the relative position of the IP daily averages with the PMW prices throughout January 2000. (Id. at 3, citing Staff Exhibit 8.2P) According to Mr. Zuraski, the data provided did not permit him to draw any conclusions relative to the reopening issues in the docket as they relate to IP. (Staff brief on reopen at 3)

For Ameren, Mr. Zuraski relied upon records of off-peak transactions provided by Ameren in an electronic spreadsheet file. The results of Mr. Zuraski's examination of these data are contained in Staff Exhibit 8.3P. Staff reports that for Ameren, most but not all of the records provided covered a single delivery day, and specific hours within the day. Staff states that there were insufficient multi-day deals to facilitate a comparison with the PMW data. (Staff brief on reopen at 3)

Staff witness Zuraski asserted that in most of the markets examined, Ameren's prices were above those in the PMW survey. For Southern MAIN, he calculated the amount by which the Ameren price exceeded the PMW price on average for the matched observations. (Staff brief on reopen at 3-4; Staff Ex. 8.3P)

Mr. Zuraski postulated that the PMW prices for Lower MAIN may not adequately represent the market within which Ameren sells and customers in its service territory buy power and energy, while recognizing that there may be some other explanation refuting such a conclusion. He recommended that Ameren provide an explanation for Ameren's prices exceeding the PMW prices as part of its surrebuttal testimony. Lacking such an explanation, he recommended that the Commission consider approving the Ameren tariff with an upward adjustment to all off-peak prices used in the market index. (Staff brief on reopen at 4)

Staff reports that in its surrebuttal testimony, Ameren provided two reasons for Ameren's prices exceeding the PMW prices. First, Ameren asserted that the Staff analysis did not differentiate between high and low volume days. Second, the Ameren witness testified that the Ameren data included a significant percentage of transactions for two specific hours. (Staff brief on reopen at 4, citing Ameren Ex. 9.0P at 2) Staff analyzed the explanation provided by Ameren, and it appears that Staff finds the two reasons identified by Ameren to be "quite reasonable." (Staff brief on reopen at 5) In its brief on exceptions on reopening, Staff recommends the addition of certain language regarding Staff's review of Ameren's explanation. (Staff BOE on reopening at 1)

As discussed elsewhere, the hearing examiner's proposed order on reopening accepted the AG's offer to work with Staff to review prices of actual off-peak transactions conducted by the utilities. In its brief on exceptions on reopening, Staff recommended that ComEd, IP and Ameren be directed to continue to cooperate with Staff and the AG in that review. (Staff BOE on reopening at 2)

The **AG** states that NewEnergy raised the possibility that the use of forward transactions to calculate off-peak market values (similar to the methodology used to calculate on-peak market values) might yield a more accurate price than using historic day ahead prices attained from Power Markets Week. The AG states that since the only possible way to make that determination was to look at actual off-peak transactions, the parties agreed that only Staff and the AG would be privy to such proprietary data. The AG comments that data produced by the utilities was reviewed by the AG and Staff experts. (AG brief on reopen at 3)

The AG deems the results inconclusive. The AG asserts that while the data reviewed indicated that using forward looking transactions might result in an increase in off-peak market values, the data was insufficient to quantify that increase. The AG suggests that the Commission continue to look at this issue during the proposed two year sunset period. During the sunset period, the AG contends that sufficient data may be available to produce substantive evidence which may lead to conclusive results on this issue. The AG urges the Commission to continue monitoring this information and indicates that it will continue working with Staff, as needed, to evaluate this evidence. (AG brief on reopen at 3-4)

On reopening, **Ameren** provided the surrebuttal testimony of Mr. Eacret in response to Staff's recommendation that Ameren explain why it realized higher prices for off-peak transactions than reported in PMW for Southern MAIN. Mr. Eacret testified that the Staff analysis does not differentiate between high volume days and low volume days. He also testified that because the data Staff analyzed are more heavily weighted toward two specific hours, there was a tendency to raise the Ameren price relative to the PMW price, which assumes an eight hour block. (Ameren brief on reopen, Appendix A, citing Ameren Ex. 9.1P at 1-2) Ameren claims that when the Ameren and PMW prices are compared on an "apples to apples" basis, the difference is not enough to warrant any adjustment. (Ameren brief on reopen, Appendix A)

ComEd states that, as the parties agreed, it provided to Staff and the AG the prices at which it sold off-peak power in multi-day transactions during the past twelve months. ComEd says that neither the Staff nor the AG submitted any testimony proposing an adjustment to the off-peak values calculated under its MVI methodology. (ComEd brief on reopen at 3)

In its reply brief on exceptions on reopening, ComEd states that while NewEnergy suggests the confidential evidence would support its case, the fact is that Staff and the AG did review additional confidential evidence and conducted cross examination consistent with the Commission's ruling on the motions to reopen as well as the agreement of the parties at the January 25, 2001 status hearing, and Staff and AG do not support an adjustment to ComEd's off-peak values. (ComEd RBOE on reopening at 5, citing NewEnergy BOE on reopening at 13)

Illinois Power reports that, like ComEd, it provided data (on a confidential basis) relating to the off-peak issues to Staff and the AG. IP states that Staff examined that data and found that no conclusions can be drawn relative to the reopening issues in this docket. IP asserts that no off-peak adjustment to IP's MVI methodology is warranted based on the evidence adduced on reopening. (IP brief on reopen at 3)

In response to arguments by NewEnergy, IP also states that it was NewEnergy itself who stated "NewEnergy has no objection to this information being deemed confidential and subject to review exclusively by Staff and the Hearing Examiner . . . . " (IP RBOE on reopening at 3, citing NewEnergy motion to reopen at 9-10)

In its brief on reopening as well as its brief on exceptions on reopening, **NewEnergy** restates some of arguments previously contained its filings in this proceeding. Because these arguments are summarized above, they are not repeated here in their entirety.

NewEnergy states that on reopening, the utilities were requested to provide evidence regarding the prices at which they have sold off-peak power and energy during the past twelve months in order to determine if any adjustment to day-ahead off-peak spot transactions is appropriate. This evidence was deemed confidential and subject to review only by the Staff and the AG. NewEnergy asserts that this evidence is important both as a check against the utilities' proposals and as an additional input to make the indices more reflective of the actual market into which the utilities sell and their customers purchase electric power and energy. (NewEnergy brief on reopen at 17)

NewEnergy states that since it is not privy to the additional evidence that the utilities were required to submit on reopening, NewEnergy offers two recommendations for what the Commission can do after having reviewed such information. First, NewEnergy argues that the methodologies should be modified to incorporate actual data from utility transactions. Second, NewEnergy contends the Commission should direct Staff to develop a system for collection of data from broker market quotes, as was suggested earlier in the instant proceeding. (NewEnergy brief on reopen at 18-19; BOE on reopening at 14)

Upon review of the actual off-peak transactional data submitted on reopening by the utilities, the Commission should, according to NewEnergy, consider inclusion of such data into the utilities' proposals. NewEnergy asserts that as a condition of approval of the proposed MVI tariffs, the Commission should require the utilities to revise their MVI tariffs to include within the methodology for calculating the daily average off-peak market values: (i) the utility's own multi-day off-peak transactions (overnight hours); and (ii) only in the absence of such multi-day transactions, day-ahead spot transactions. NewEnergy claims that Staff is capable of developing a simple method to obtain day-ahead prices from brokers. (NewEnergy brief on reopen at 19; BOE on reopening at 15)

NewEnergy also says the Commission should direct the utilities to reflect the actual value of off-peak power and energy through a modification of the off-peak data hierarchy in order to ensure that the market values properly reflect the value of the freed up power and energy. (NewEnergy brief on reopen at 19-20; BOE on reopening at 15)

In its brief on exceptions on reopening, NewEnergy claims that the evidence on reopening failed to demonstrate that day-ahead off-peak spot transactions are reflective of multi-day off-peak forward transactions on a routine and continual basis (NewEnergy BOE on reopening at 13 and Attachment A at 15-16), and NewEnergy offers two options that it claims reflect market realities. First, the NewEnergy suggests the utilities modify their methodologies to incorporate actual data from utility transactions. Alternatively, NewEnergy suggests the utilities rely upon use of a system for collection of data from broker market quotes. (NewEnergy BOE on reopening, Attachment A at 16)

Under its first option, NewEnergy says the utilities would revise their MVI tariffs to include within the methodology for calculating the daily average off-peak market values: (i) the utility's own multi-day off-peak transactions (overnight hours); and (ii) only in the absence of such multi-day transactions, day-ahead spot transactions. NewEnergy asserts that this data hierarchy modification is more likely to reflect the market in which the utility sells and its customers purchase electric power and energy because it reflects actual market activity, rather than a limited and subjective selection of data. (NewEnergy BOE on reopening, Attachment A at 16)

IV. TIME PERIOD AND NOTICE RELATED ISSUES

A. Period A/B v. 12-Month Rolling Average

ComEd and Ameren propose to recalculate MVs and CTCs twice per year in conjunction with "Applicable Period A" and "Applicable Period B" information filings. IP, on the other hand, proposes a rolling 12-month average approach in which it would compute market values and CTCs every month.

ComEd's MVI methodology calculates market values twice each year, in March and June. (ComEd Ex. 6 at 4) The market values calculated in March apply during "Applicable Period A," and the market values calculated in June apply during "Applicable Period B." (ComEd Ex. 7 at 11) Applicable Period A covers a 12-month period starting with the June billing month and continuing though the following May billing month. (Id.)

Applicable Period B covers a 9-month period starting with the September billing month and continuing through the following May billing month. (Id.) The March period is used in order to obtain snapshots as close as practicable to the summer period, the period that has the most significant effect on market value calculations, and thus use the most current and accurate available data. ComEd says the June calculations incorporate updated September and non-summer data. (ComEd brief at 29-30)

ComEd notes that there are other proposals in the record, such as use of a 12-month rolling average proposed by IP, as discussed below. ComEd opposes these alternatives because they would, in ComEd's opinion, send inappropriate price signals to customers and invite gaming by suppliers. (ComEd brief at 30; reply brief at 39) However, ComEd takes no position on the use of these alternatives in IP's service area. (Id.)

In their briefs on exception, both Ameren and ComEd recommend that the order expressly approve the use of the Applicable Period A/B approach. (Ameren brief on exceptions at 2; ComEd brief on exceptions at 12)

Ameren will also determine MVs and CTCs twice each year. As with ComEd's proposal, there will be two separate periods for each year, Applicable Period A and Applicable Period B. MVs and CTCs for Applicable Period A will be filed on or before the 10th business day of April of each year. Applicable Period A will cover a 12-month period starting with June and continuing through the following May. MVs and CTCs for Applicable Period B will be filed on or before the 10th business day of July of each year. Applicable Period B will cover a 9-month period starting with September and continuing through the following May.

Ameren does not dispute the utility of a 12-month rolling average methodology such as that proposed by IP. However, Ameren prefers the Period A/B methodology, and believes that, overall, it provides the best solution for the customers and suppliers in the Ameren service territory. (Ameren brief at 16)

Ameren witness Hock explained why, in his view, market value rates and transition charges should be calculated for customer classes in both March and June. (Ameren Ex. 3.0 at 3-4) He said that summer on-peak prices have been extremely volatile and price levels have been significantly higher than during the non-summer months, and that from year to year, the magnitude of these differences can also vary considerably. The best method to reduce this price volatility risk, Ameren contends, is to use forward price quotes as close to the summer as possible to capture the available market information, while still meeting customers' needs for sufficient planning time after MVs and CTCs have been publicized. Without accounting for the on-peak seasonal price volatility, Ameren claims there can be considerable risk for all market participants.

Ameren says off-peak market prices are more consistent throughout the year and do not exhibit the volatility that on-peak prices do, but they should still be updated to capture the best available information when establishing the off-peak prices. In Ameren's view, by performing these calculations at two different points in time, customers will have more accurate price signals which should enhance the development of the competitive market in Illinois. (Ameren brief at 13)

This, in Ameren's opinion, is what is done with the Period A/B methodology. According to Ameren, since there is little price volatility during the non-summer months, the accuracy of the prices for this time period is not greatly affected by the lack of monthly recalculations. Ameren contends that the increased complexity from monthly recalculations impacts not only customers but suppliers and host utilities as well. According to Ameren, suppliers would have an increased administrative burden associated with continuously updating pricing models and marketing plans, and would have greater difficulty providing accurate proposals to customers. Ameren says customers also must continuously monitor pricing information in order to make accurate decisions. Finally, Ameren argues, suppliers and customers have only a short window of time in which to make decisions in response to the updated pricing. (Ameren brief at 15)

Second, Ameren asserts, there would most likely be cases where the Period A/B methodology would provide more accurate pricing information. For example, Ameren contends, a 12-month forward view in September or October may include inaccurate forward price information for the following summer, and since the summer months heavily influence the 12-month prices, a customer may choose not to switch to delivery services because of the unacceptable level of risk. (Id.)

Finally, Ameren contends, the differences in the cost of implementing the Period A/B methodology and the 12-month rolling average are substantial. Ameren claims there is a higher cost of implementation with the 12-month rolling average due to system changes and customer service, along with more complex tariff modeling and other system changes, that would make the cost of implementation higher with the 12-month rolling average methodology. Ameren says impacts to customer service include increased staffing of the call centers to answer customer inquiries, training of call center personnel, and more frequent mailings. (Id. at 15-16)

As noted above, **Illinois Power** proposes a rolling 12-month average approach in which it would compute market values and CTCs every month. IP's proposal calls for the following process to be used to collect the raw data: data are collected on the last 5 business days of the preceding month and the first 5 business days of the current month. Once the raw data are collected, market values and associated CTCs are published on IP's website on the 8th business day of each month with those values effective for those customers who either begin delivery services during the following billing month or for those customers whose anniversaries fall during the following billing month. Once selected, however, the customer's market value and CTC (except for changes in non-market value charges) remain constant for the subsequent 12-month period. Thus, IP states, while a new set of values are published for the next month, they apply to the next wave of customers and do not change the values used by customers who have a different anniversary month. (IP brief at 27, citing IP Ex. 3.1 at 6-9)

IP notes that some parties have taken issue with IP's 12-month rolling average method as discussed below. IP disagrees with these criticisms. (IP brief at 27-31; reply brief at 21-24) Furthermore, IP says its method of then keeping the market values constant for an entire 12-month period for those customers who select choice in any given month is an improvement over the NFF and the Period A/B method for all but a very few customers for whom the methods are equivalent due to anniversary date coincidence. Under the NFF process, IP states, because market values change every January 1 for every customer, only those who have anniversary dates of January 1 have a pre-set market value for an entire 12-month period. Similarly, IP asserts, for the Period A/B method, because market values change every June 1 for every customer, only those who have an anniversary date of June 1 have a pre-set market value for an entire 12-month period.

IP says one of the criticisms of the NFF process is that it uses stale data because the contracts reviewed are months and possibly years old. Both the IP method and the Period A/B method use more recent data; however, IP believes its method is superior in that it "calculates each and every period's TC closer to the effective date of the TC than the A/B method would." (IP Ex. 2.8 at 10) IP regards the difference as significant because under IP's method, the data is on average only slightly more than a month old whereas, IP states, on average the Period A/B data is almost 4 months old for period A and almost 7 months old for period B. According to IP, as the amount of time between data collection and effective dates lengthens, customers and ARES receive a free option at the utility's expense, and gaming opportunities become more significant. (IP brief at 28-29) Furthermore, IP argues, competition may be hindered if prices move substantially during this period. IP asserts that even a one-month additional lag, as suggested by Unicom, can see prices move substantially, as evidenced by a 45 mil/kWh shift in prices from the beginning of May 2000 to the end of May. (IP brief at 28-29, citing IP Ex. 2.6 at 29)

In **CILCO's** view, the Commission should propose to modify the Illinois Power proposal, which would update the market value on a monthly basis, to follow the ComEd and Ameren tariffs, which propose to update market values only twice per year. Based on Illinois Power's tariffs, CILCO says customers would be allowed less than two weeks to make the decision to switch suppliers. Based upon its experience with customers, CILCO believes two weeks is insufficient time for the customer or supplier to examine the numbers, negotiate a contract and proceed through businesses decision making channels. (CILCO brief at 5-6)

The **AG** believes the Period A/B method is superior to IP's 12 month rolling average approach. (AG brief at 16-17; reply brief at 5-8) The AG says that because IP calculates a new market value every month, it only takes data from the Into-Cinergy market during a 10 day window, while the Applicable Period A/B method collects data during a 20 day window. The AG argues that the Applicable Period A and Applicable Period B method has the potential for more data to be used in arriving at a more accurate representation of market value. In the AG's opinion, the Commission should opt for the method that potentially offers a broader data base for calculating the market value of electric power and energy, and that method is the Applicable Period A/B approach.

In response to the AG, IP says the AG's disagreement with IP's approach on this issue stems from a misconception of how much data the Period A/B method and IP's 12-month method uses. (IP reply brief at 22-23) According to IP, the Period A/B method does use a 20-day window but is does so only 2 times per year, while over the course of any year, IP's proposal surveys 120 business days worth of data from three sources each to arrive at market values. (IP reply brief at 22-23, citing IP Ex. 2.1 at 12)

Staff's position is that the Commission "should approve the use of both the ComEd/Ameren proposed Applicable Period A/B and the use of the IP proposed rolling 12 month approaches toward updating MVs and CTCs via the utilities' market value index tariffs." Staff also commented that the timing issues for delivery service customers are basically the same as for PPO customers. (Staff brief at 55)

Another Period A/B issue was raised by **Nicor** in its testimony. According to Nicor, Period B contains 12 months of data without utilizing a summer period, which results in "fluctuations in pricing/savings . . . during the summer" and is "detrimental to choice." (Nicor Ex. 1.0 at 3) Nicor contended that a preferable alternative to Period A/B pricing is a market value calculation that includes a full 12-months forward.

In response to Nicor, Ameren stated that Periods A and B have significantly different prices because the market values for power and energy differ between the periods. In Ameren's view, the recognition of different prices for different time periods sends proper price signals to users. (Ameren brief at 13) In fact, Ameren argues, since the Period B market values more accurately reflect the price at which a RES should be able to serve a customer during the non-summer period, the Period A/B structure should promote more efficient competition than Ameren's current NFF based market value tariff.

ComEd also disagreed with Nicor's testimony. In ComEd's view, Nicor's proposal would not only artificially lower CTCs in non-summer months, but would also increase CTCs in summer months by understating the value of power and energy during summer months. (ComEd brief at 30) ComEd asserts that Nicor's criticisms are based on a misunderstanding of the Period A/B proposal. ComEd says no PPO customers are penalized under the Applicable Period A/B method; instead, customers benefit from accurate price signals. ComEd further submits that customers entering delivery services during Applicable Period B are faced with market values and CTCs that accurately reflect the economic conditions that will occur before the summer of the following year. (ComEd brief at 30)

In its reply brief, Nicor says that while it "would stipulate at this point in time that it would be too burdensome for the utility to change it's A/B period method of calculating summer and nonsummer market values", Nicor believes the Commission should "retain jurisdiction over the market index methodologies, and enter another Interim Order to be able to appropriately modify and update the methodologies as the Illinois electricity markets develop." (Nicor reply brief at 5)

B. Notice Period for PPO and Delivery Service Customers (Decision Window)

Another feature of IP's 12-month rolling average approach that raised concerns among several parties was the notice period or "decision window" for PPO and delivery service customers. Among other things, these parties questioned whether IP's 12-month approach provides sufficient time for RESs to present offers to consumers, and for consumers to consider those offers and compare them with other available service options from the utility. As explained by Staff, one difficulty alleged by parties arises from IP's plan to provide the next month's MVs by the eighth business day of the prior month, while PPO applicants must provide IP with 30 days notice prior to their meter read date in order to shift onto the PPO. Hence, customers with meter reads at the beginning of the month would have to submit PPO notification prior to the 8^{th} business day of the month -- before market values and CTC's are known. Staff also commented that the timing issues for delivery service customers are basically the same as for PPO customers. (Staff brief at 58)

As Unicom reports, under IP's SC 110 an enrollment request for delivery services may be submitted not less than 7 calendar days before the customer's next scheduled meter reading date. (Unicom Ex. 1.0 at 7; IP Ex. 3.6 at 4) Under IP's proposed rescission process, an ARES may submit, up to 5 days before the customer is to actually commence taking delivery services, a notice to rescind the earlier switch authorization. (Unicom Ex. 3.4 at 7) At a minimum, a customer would have 8 days to examine market values and transition charges, make final switching decisions and meet the minimum time requirements to submit a Direct Access Service Request ("DASR") for delivery services. (IP Ex. 3.6 at 4)

Illinois Power asserts that its notice periods or "decision windows" for PPO and delivery services customers are appropriate. (IP brief at 27-31; reply brief at 21-24) With regard to the process used to collect the raw data, IP states that data are collected on the last 5 business days of the preceding month and the first 5 business days of the current month. Once the raw data are collected, market values and associated CTCs are published on IP's website on the 8th business day of each month with those values effective for those customers who either begin delivery services during the following billing month or for those customers whose anniversaries fall during the following billing month. (IP brief at 27)

IP asserts that for the year 2000, a delivery services customer whose meter read date is early in the cycle (for example, a customer with a Bill Cycle 2 read date) would have at least 8 days (and, in some months, as many as 16 days) between the publication date and the last day for selecting choice, and that those customers with later reading dates will have even more time. (IP brief at 27-28)

IP further argues that as the amount of time between data collection and effective dates lengthens, customers and ARES receive a free option at the utility's expense and gaming opportunities become more significant. (Id. at 27-28) Furthermore, IP argues, competition may be hindered if prices move substantially during this period. IP asserts that even a one-month additional lag, as suggested by Unicom, can see prices move substantially.

Furthermore, IP states, it has trimmed the time it has to turn the raw data into final market values and CTCs substantially. (IP brief at 29) On this point, IP compares its original June 5, 2000 filing, in which values were not published until the 15th day of each month, with IP Ex. 2.2 which changes the publication date to the 8th business day. According to IP, three business days (that being the time between the 5th business day when data is fully available to IP and the 8th business day on which values are published) is a relatively short period of time for the amount and scope of work to be done, but in an effort to ensure that customers and ARES have the data as quickly as possible, IP has shortened the time to perform the necessary calculations. (IP brief at 29)

IP believes arguments that its proposal does not provide customers and ARES with sufficient time are incorrect in several ways. First, IP asserts, any ARES or customer can follow the market trends and have a fairly good idea of what the next month's market values, and hence CTCs, will be before they are actually published. IP contends that under its proposal, all values except the volatile on-peak component are calculated only annually, allowing all participants to know those components well in advance of each month. As for the volatile on-peak component, IP claims any market participant can estimate the new market values by (1) knowing the value published last month by IP (unlike the period A/B method that only publishes values twice per year); and (2) using widely-available sources (including a published market survey used in part to calculate IP's market values) to determine if prices are rising, falling or staying the same. (IP brief at 29)

Second, IP argues that the debate over whether the decision window is long enough proceeds from an incorrect assumption that customers can only act when they have perfect knowledge of all prices. In IP's opinion, this is simply not true. (IP brief at 30)

With specific reference to the notice period for PPO customers, IP states that in response to IP's original process for handling requests to take PPO service, some parties raised a concern about the decision window available to such customers. After considering these concerns, IP determined that it was "willing to modify the 30-day PPO requirement to be the lesser of either 30 days or the length of time between the 10th business day of a month and the scheduled meter read date for the next billing cycle month." (IP brief at 31, citing IP Ex. 3.6 at 5 as amended at Tr. 617) Given this modification, IP believes "this is no longer an issue . . . . " (IP brief at 31)

In its brief on exceptions, IP argues that, as currently worded, the change to IP's method of updating market values contained in the hearing examiner's proposed order will cause customer confusion and create gaming opportunities. (IP brief on exceptions at 8-10) IP further asserts that even as few as eight days will prove sufficient time for customers to make a decision whether to select delivery services. (IP replacement language at 3)

Also in its brief on exceptions, IP asserts that if its primary recommendation not to expand customers' decision window by one month is unacceptable to the Commission, then there is an alternative methodology which IP says will provide all customers over 30 days to decide whether to select delivery services. (IP brief on exceptions at 12; replacement language at 4-5) IP's alternative methodology involves updating market values on a bi-monthly basis, so that values would be updated six times a year and applicable to those customers whose anniversary dates or beginning dates fall in the next two succeeding billing cycles. IP asserts that adoption of this alternative methodology would make it unnecessary for IP to publish market values on the 8th business day, rather than the 15th business day, as it previously agreed to do.

Similarly, IP asserts that adoption of this alternative methodology would make it unnecessary for IP to change the notice requirement for PPO customers to the lesser of either 30 days or the length of time between the 10th business day of a month and the scheduled meter read date for the next calendar month, to which IP previously agreed. (Id.) As a result, IP recommends that these two changes, to which IP previously agreed, be eliminated if the Commission adopts IP's alternative methodology for expanding the decision window identified in its brief on exceptions. (IP replacement language at 5)

Unicom argues that IP should increase the amount of time for customers to choose delivery services. (Unicom brief at 4-7) According to Unicom, some Illinois Power delivery services customers will have a very narrow window in which to select delivery services based upon the published market values, and for some customers, the decision window may be as little as eight days.

Unicom says the period for customers to decide whether to select delivery services under the Illinois Power tariffs is critical for the development of retail competition, but is insufficient as provided in the Illinois Power tariffs. Unicom claims IP will force customers and ARES to rush to judgment and will increase the marketing costs for ARES, and that because ARES and customers will have little time to decide, smaller, less profitable customers may be left behind.

Unicom witness Braun testified that once the market values for the month are announced, customers may have little more than one week to decide whether to select delivery services. He stated that if a customer elects delivery services under the market values announced that month, the customer pays transition charges based on those market values. Mr. Braun contends that the IP proposal does not provide enough time between the announcement date for market values and the election date for delivery services. (Unicom Ex. 1 at 6-7)

Unicom witness Braun also asserts that IP's proposal, which would allow a customer or ARES to rescind its decision to take delivery services up to five days before the customer actually commences taking delivery services, creates more problems than it solves. He argues that the IP's solution still does not allow enough time for reasonable marketing efforts and a comfortable decision window for customers and ARES. He also contends that by creating a free "out" for the customer, IP's solution would invite mischief. Mr. Braun claims that customers who have no serious intention to switch might nevertheless sign up with a marketer each month just to preserve their ability to shop. He also says it could encourage what he calls "soft slamming." Mr. Braun suggests that ARES might entice customers to submit an initial delivery services request with the caveat that they can always back out up to five days before delivery. He asserts that an unscrupulous marketer could simply miss the rescind date and gain a new customer. (Unicom Ex. 1 at 7-8)

To alleviate these concerns, Unicom has proposed that Illinois Power expand the decision window by moving the index sampling intervals back one month. (Unicom brief at 5) For example, under Unicom's proposal, for an October deliver services start, IP would collect observations of the indices in the last five days of July and the first five days of August, and IP would announce the October market values by the 8th business day of August. (Unicom Ex. 1 at 8) Unicom states that customers then would have no less than 30 days in which to decide whether to select delivery services at the market values of energy announced by Illinois Power. (Unicom brief at 5) Unicom's proposal, if adopted, would minimize the concerns it raised.

Unicom argues that, contrary to IP's assertion, customers may not be able to follow the trends and anticipate what the MV may be, even if ARES may be able to do so. (Unicom brief at 5) Unicom also criticizes IP's risk analysis. Unicom asserts that there is no evidence that the risk to IP necessarily increases in proportion with the length of time the offer is open. (Id. at 6) Unicom further suggests that IP already bears the risk that customers will switch to its PPO if prices rise above the market value of energy, and that Unicom's proposal adds nothing to that risk. (Unicom brief at 7)

In its reply brief, Unicom asserts that the development of competition in the Illinois Power service territory is proceeding at a "glacial pace," and that Unicom's "modest modification" to Illinois Power's tariffs might increase the chances that Illinois Power customers will have a reasonable opportunity to analyze the market values of energy, examine the contract offers from ARES, and make a choice. (Unicom reply brief at 5)

In its reply brief on exceptions, Unicom responds to the alternative proposal contained in IP's brief on exceptions discussed above. Unicom argues that IP's new proposal does not solve the fundamental problem that customers with meter read dates in the "odd" months (the months that follow the months in which market values are published) still will have an unreasonably short period of time in which to evaluate the new market values. Unicom asserts that because IP's new proposal first arose in IP's brief on exceptions, the parties and the hearing examiner have had no opportunity to evaluate the new proposal and there is no evidentiary foundation for the proposal. (Unicom reply brief on exceptions at 1-2)

Unicom contends that contrary to IP's assertions, it is unclear how the new proposal will reduce gaming opportunities or what type of conduct it is designed to eliminate. Unicom further asserts that there is no reason to believe that IP's new proposal is more "accurate" than the modification endorsed by the hearing examiner's proposed order. Unicom concludes that it is difficult to see, based on this record, whether one methodology is more accurate than the other. (Unicom reply brief on exceptions at 2-3)

PE Services did not file testimony or an initial brief. In its reply brief, PE Services says it objects to the short notice period associated with the IP proposal. PE Services says it supports the "30 day" solution suggested by Unicom and described above. (PE Services reply brief at 11)

IIEC witness Mr. Stephens expressed a concern that due to the notice provisions, a customer may have to sign up for PPO service prior to knowing the transition charge that will be imposed, or even if the customer is eligible for PPO service. (IIEC brief at 34, citing IIEC Ex. 2 at 14)

IIEC says IP's offer to modify the 30 day PPO requirement to be the lesser of either 30 days or the length of time between the 10th business day of a month and the scheduled meter read date for the next calendar month, though well intended, is inadequate. (IIEC brief at 34, citing IP Ex. 3.6 at 4-5) IIEC says customers, particularly those switching to delivery service for the first time, need sufficient time to evaluate power and energy proposals. IIEC asserts that under IP's proposal, the period for decision for some customers could be as short as 2 days (assuming a switch date prior to the 8th business day in the following month).

IIEC further argues that the complications from the above provisions are exacerbated by IP's policy of not making PPO service available to customers who have a zero transition charge. In this case, IIEC contends, a customer who becomes eligible for PPO service due to a change in market prices may not be aware of its eligibility until it was too late to sign up for PPO service. (IIEC brief at 35)

IIEC offers certain alternatives to IP's proposal, one of which would allow IP to change the market value charges only if the monthly market value update reflects an overall change in the values exceeding some threshold level. Another would require IP to allow off-cycle switching free of charge to any customer switching to delivery service, with or without the PPO. (IIEC brief at 35)

In response, IP objects to IIEC's proposal to allow free off-cycle switching. (IP reply brief at 22) IP asserts that this proposal appeared for the first time in IIEC's brief, and that IP has had no opportunity to present evidence on it or otherwise test it through the evidentiary process. (Id.) In any event, IP argues, there is no need for such a proposal because the period of time to make a PPO decision under IP's filing is more than adequate. It should be remembered, IP contends, that customers interested in PPO service know of this interest well in advance and need only await notice of whether they have a positive TC. (Id.)

In its reply brief on exceptions, IIEC responds to the proposal contained in IP's brief on exceptions to calculate new market values bi-monthly rather than every month. IIEC believes that IP overstates the potential for customer confusion and gaming opportunities under the approach adopted in the hearing examiner's proposed order. IIEC indicates that while it prefers the approach adopted in the hearing examiner's proposed order, it would find the IP bi-monthly approach acceptable if IP maintains its prior agreement related to the modified PPO decision window. IIEC agrees that publication of market values and transition charges by the eighth business day of the month is not a critical element under IP's alternative bi-monthly approach. (IIEC reply brief on exceptions at 6-7)

CILCO asserts that under Illinois Power's tariffs, customers would be allowed less than two weeks to make the decision to switch suppliers. Based upon CILCO's experience with customers, CILCO views two weeks as insufficient time for the customer or supplier to examine the numbers, negotiate a contract and proceed through businesses decision making channels. (CILCO brief at 5-6; reply brief at 5)

CILCO witness Munson provided an example under which, she contends, an IP customer would have approximately one week to review published transition charges and decide whether to switch suppliers. Ms. Munson observes that market values and the associated transition charges are published on the 8th business day of a given months and that a DASR, to obtain delivery services, must be submitted 10 days prior to the next monthly meter read. She states that if the meter read date for a customer is the first day of a month, that customer would be required to submit a DASR 10 days prior to the first of the month, which is approximately one week after the transition charges were published. (CILCO Ex. 3.0 at 5)

In its brief on exceptions, CILCO indicates that if IP does not follow the ComEd and Ameren proposal to update market values only twice per year, CILCO supports the proposed order conditioned on approving the 12-month rolling average methodology. CILCO states that the proposed order would alleviate its concern by proposing that IP expand the decision window by moving the index sampling intervals back one month as proposed by Unicom witness Braun. (CILCO brief on exceptions at 6)

The **AG** asserts that deciding whether or not to take delivery services is an important decision. According to the AG, because IP recalculates market values every month, the time frame in which to make that important decision is reduced to two weeks or less, which is an unnecessary reduction of the time that customers have to evaluate their options. While a large, sophisticated customer might not be affected by this short time frame, the AG believes a small, less sophisticated customer very easily could be adversely prejudiced by it. The AG contends that this potential adverse effect is unwarranted, and may be enough to keep the small, less sophisticated customer from attempting to take advantage of the benefits of the Customer Choice Act. (AG brief at 17)

As discussed above, IP's brief on exceptions proposed to use a bi-monthly rolling average methodology to provide customers more time to make decisions. In its reply brief on exceptions, the AG contends that IP's new proposal is not significantly different, or better, than the methodology contained in the hearing examiner's proposed order. The AG asserts that both methodologies are inferior to the Period A/B approach used by Ameren and ComEd. The AG continues to recommend that IP be required to adopt the Period A/B methodology. (AG reply brief on exceptions at 3-4)

C. Transitional Issues

Several transitional issues arose during the proceeding. These issues relate in part to: when customers will be moved from existing market value tariffs to newly approved MVI tariffs; how customers currently receiving PPO service will be treated in conjunction with a move from NFF to index based market values; customer eligibility for PPO service when transition charges decline from a positive value to zero; and customer eligibility to initiate or renew PPO service when transition charges are zero.

Staff recommends that the change in ComEd's tariff, to incorporate Staff's recommended use of Into-Cinergy on-peak price inputs, take effect with ComEd's next Applicable Period A informational filing, which would be in early April 2001, according to the currently-effective tariff. (Staff Ex. 3.0 at 28; Staff brief at 28) IIEC recommends that, to the extent ComEd makes such a filing, it should be required to provide the parties who have participated in this case with a copy of the proposed filing at least 30 days prior to its filing with the Commission. (IIEC brief on exceptions at 23)

In response to IIEC's suggestion that ComEd provide a copy of the proposed filings at least 30 days prior to its filing with the Commission, ComEd claims that proposal lacks merit for two reasons. ComEd first argues that there is no guarantee that there will be at least 30 days prior to the Commission's decision and the time that ComEd must file its tariffs. ComEd also contends that there is no requirement in Section 16-112 that parties be given such an opportunity. ComEd claims that the normal practice of review by Staff of a compliance filing is sufficient. (ComEd reply brief on exceptions at 16)

IP originally proposed an approach that would use the 2000 NFF market values until the customer's anniversary date, at which point they would convert to the market value index. (IP Ex. 3.6 at 7) IIEC expressed concern over the potential detriment to customers as a result of changing from the NFF approach to MVI approach. Specifically, IIEC indicates that customers could begin to take PPO service in January 2001 based upon the 2001 NFF values, and then the Commission could in, March 2001, approve IP's proposal, causing customers' transition charge to go to zero as a result of the IP MVI values in March, 2001. IIEC asserts that it would be unfair for a customer to weigh its delivery service options, then begin taking PPO in January, 2001 only to find that two or three months later it must look elsewhere because its transition charge has gone to zero as a result of IP's MVI approach. (IIEC brief at 36)

According to IIEC, IP has apparently recognized this concern. IIEC observes that IP agreed to use the NFF market values for the customer during the remaining term of the PPO contract, even if the MVI market values would cause the transition charge to go to zero. If followed, IIEC indicates that this approach would alleviate this particular concern. (Id. at 36)

IP indicates that it will transition customers from the NFF values to MVI values as customers' anniversary dates roll around in 2001. In response to a concern raised by IIEC, for those whose anniversary dates occur prior to implementation of Rider MVI in 2001, IP says it will recalculate the customer's transition charges on January 1, 2002 using the MVI values and then again on their anniversary date in 2002. IP believes that this resolves the concern raised by IIEC. (IP Ex. 3.6 at 5-6; IP brief at 32)

IP states that technically, IIEC's restatement of its proposal is not accurate for those customers with anniversary dates earlier in the year. IP's intent is to use the NFF values through either the customer's anniversary date in 2001 or January 1, 2002 (at which point all values would change to the MVI for January 2002 for those customers who were not already on MVI values and change again, if needed, on the customer's anniversary). IP asserts that this is no different than what would happen if new NFF values were used for 2002, but there is no guarantee that there will be any NFF values published for IP's territory. IP states that no party appears to object to its handling of transitional customers. (IP reply brief at 24)

In its brief on exceptions, Staff raises an additional transitional issue. Staff notes that Section 16-112(m) permits the Commission to propose modifications to the tariffs that are the subject of this proceeding and that the utilities may accept these modifications, in which case the tariffs take effect as modified, or reject such modifications, in which case the Commission may require the rejecting utility to place into effect a tariff incorporating the NFF procedure set forth in Section 16-112(m). (Staff brief on exceptions at 3-4)

Staff states that the Commission has initiated Docket No. 01-0011 to determine the form and content of contract summaries to be used during the 2001 NFF process. Staff asserts that it is possible that the form and content of contract summaries deemed appropriate for the 2001 process would depend in some measure on whether the tariffs proposed by ComEd, IP, and Ameren in these consolidated proceedings were put into place or rejected in favor of the NFF numbers. In order to accommodate any difference between the contract summary form and instructions to be sent to reporting entities in one eventuality as opposed to the other, Staff recommends that the Commission structure its Order to require ComEd, IP, and Ameren to respond no later than seven days following the entry of this order or April 6, 2001, whichever is earlier, whether they accept the modifications the Commission proposes herein. (Staff brief on exceptions at 4-5)

In their reply brief on exceptions, both ComEd and IP indicate that they do not oppose the suggestion, made by Staff in its brief on exceptions, that the utilities respond no later than seven days following the entry of the Commission's order whether they accept the modifications stated in the order. (ComEd reply brief on exceptions at 1-2; IP reply brief on exceptions at 11)

Having reviewed the comments of the parties, and given the timing of this order, the Commission concludes that the three utilities should be required to inform the Commission as to whether they intend to accept the modifications the Commission proposes herein within seven days of the entry of a final order, and to file any such MVI tariffs within that same seven day period.

D. Availability of PPO Service to Customers with Transition Charges of Zero

It is IP's position that under the Act, a delivery services customer is not eligible to obtain PPO service unless that customer is paying transition charges. Under IP's proposal, a customer is not eligible to begin taking PPO service if that customer is not paying transition charges. Similarly, a PPO customer may not renew PPO service on its anniversary date if the updated market value used to calculate CTCs causes the customer's transition charge to become zero. Furthermore, under IP's proposal, a customer that is paying transition charges and has begun taking PPO service, will become ineligible to continue on PPO service if a change in one of the input variables in the transition charge formula causes that customer's transition charge to become zero.

IIEC, on the other hand, asserts that under the Act, any non-residential customer of a utility that assesses transition charges is entitled to take PPO service. In IIEC's view, not only should a customer whose transition charge declines from a positive value to zero remain eligible for PPO service, but a customer should also be allowed to initiate PPO service when its transition charge is equal to zero. Similarly, IIEC says a PPO customer that wishes to renew PPO service on its anniversary date should be allowed to do so even if the use of an updated market value causes the transition charge to decline to zero.

IIEC argues that no matter what the circumstance that causes the customer's transition charge to go to zero, the customer is entitled to continue to take PPO service, or even begin PPO service for the remaining term, which is a year. IIEC says it is noteworthy that ComEd offers PPO service to all delivery service customers, regardless of whether the transition charge is zero. (IIEC brief at 36)

As discussed above, IIEC and IP disagree whether a customer may remain on PPO service if its transition charge declines to zero during the term of its PPO service arrangement. Under IP's proposed 12-month rolling methodology for determining the customer's transition charge, IIEC acknowledges that the likelihood of a changed transition charge midterm is slight. However, IIEC says that there does exist the possibility of some unforeseen circumstance that may result in a changed transition charge during the term of the PPO contract. IIEC states that should the Commission reject the MVI approach altogether and stay with the NFF, a changed transition charge midterm is quite likely. IIEC argues that its concern, that a transition charge could go to zero in the midst of a customer's PPO contract with IP, remains ripe for consideration. (Id.)

IIEC states that Section 16-110(b) provides, in part, that the electric utility may require that the customer purchase such electric power and energy for periods of not less than one year. According to IIEC, it is clear the General Assembly has placed a minimum time period in which the PPO service can be taken – one year, but has afforded the utility the discretion to offer the PPO for a term greater than one year by its use of the discretionary "may." IIEC argues that the General Assembly has not offered the option of service for less than one year. (Id. at 37)

IIEC contends that the remaining portion of the statute lends credence to its interpretation. The statute, IIEC says, goes on to provide that a utility may require the customer to give 30 days notice for a purchase of one year's duration, and 90 days notice for a purchase of more than one year's duration. IIEC agues that the General Assembly appears fixated on a minimum term of one year, in which case a customer must give 30 days notice, but in the event the utility would offer a PPO term of greater than one year, the customer must give 90 days notice. (Id.)

According to IIEC, Subsections (c) and (d) of Section 16-110 also lend support to its interpretation that the PPO is to be made available to a customer for at least a year. IIEC says that Subsection (c) provides that after the transition charge period, and until the provision of power and energy is declared competitive, a customer that paid any transition charge it was required to pay is permitted to purchase the PPO from the utility "for contract periods of one year" at certain prices. IIEC states that under similar conditions precedent, subsection (d) permits a customer (other than a small commercial retail customer) that paid transition charges to purchase the PPO from the electric utility "for contract periods of one year" at certain prices. IIEC concludes that there is a clear statutory directive in Section 16-110 obligating the provision of PPO for at least one year. (Id.)

IIEC also asserts that as a matter of law, a customer is entitled to PPO service anytime its transition charge is zero. IIEC says Section 16-110(b) states that a non-residential delivery services customer paying transition charges to the electric utility shall be permitted to purchase electric power and energy in the form of the PPO. IIEC contends that the statute is straightforward in this regard, providing that if the customer is "paying transition charges," it is entitled to PPO, as the only stated condition. (IIEC brief at 38)

According to IIEC, CILCO does not seek to recover a transition charge, and thus does not provide the PPO. IIEC says that CILCO is not requesting any customer to "pay" a transition charge. IIEC states that IP is requesting non-residential customers to pay transition charges, and it so happens sometimes the payment is zero. IIEC argues that the statute does not state the amount of remuneration - - it only requires the customer pay something. IIEC contends that a customer transition charge can bounce from zero to a positive number and back to zero again every time a component of the transition charge changes. IIEC believes the General Assembly "could not have intended a circumstance where the PPO service could be offered/withdrawn/offered/withdrawn, . . . etc." (Id. at 39)

IIEC contends that from the perspective of the customer, the PPO is being compared to other options, such as taking power and energy services from an alternative supplier. According to IIEC, after considering all these options, and expending time and resources, the customer does not expect that once it is taking PPO service, it would be declared ineligible some months later. IIEC claims that contract or price stability can be of importance in a competitive environment. (Id.) IIEC asserts that product lines and future operations take into account a certain amount of stability in the costs incurred to sustain these efforts. IIEC argues that to unexpectedly put the customer in a situation of having to consider a different price for electricity in a short period of time, may serve to disrupt normal business processes. (Id. at 39-40)

IIEC claims that from a policy perspective, it is unclear why IP would resent IIEC's position. IIEC asserts that if IP believes its MVI approach is correct, and that its methodology produces the correct market value, then there is no credible reason for it not to sell that power and energy to any delivery service customer at the market value. According to IIEC, IP could sell the freed-up power into the wholesale market, or it could sell it to the customer via PPO – in either case, IP is made whole as it is selling that power and energy at the market value. (Id. at 41)

IIEC argues that requiring the utility to sell the power to provide PPO service helps keep the utility "honest" in its MVI determinations. IIEC contends that the offering of PPO service provides a disincentive to downward bias the MVI determination in an attempt to maximize transition charges. According to IIEC, the more PPO is available to customers, the greater this disincentive for bias, as artificially low power prices would have to be made available to customers. The corollary to this, IIEC claims, is the elimination of any incentive IP may have for upward bias, believing that by artificially inflating the MVI, it can deprive some customers of the PPO option. IIEC contends that this policy directive surfaced previously in Docket 00-0259, where Staff recommended the Commission condition the approval of ComEd's petition on making the "wholesale option" available as long as Rider PPO is available. (Id. at 42)

IIEC believes utilities are legally obligated to provide PPO service to all delivery service customers, irrespective of the level of the transition charge. The exceptions to this are, according to IIEC, utilities that do not impose transition charges at all; they currently are not required to provide PPO service to anyone. (Id.)

IIEC disagrees with IP's assertion that "when no charge is due from a customer, then the customer is not paying a charge." (IIEC reply brief at 23-24, citing IP brief at 32) IIEC claims that there is nothing in Section 16-110(b) that states or implies that when no charge is due from a customer who would otherwise be obligated to pay a charge, then PPO service need not be offered. IIEC argues that when a customer has been paying a transition charge, but now has a calculated charge of zero, does not mean the customer has failed to pay the charges he is legally obligated to pay and therefore is no longer eligible for PPO service. (IIEC reply brief at 23-24)

IIEC states that IP somehow interprets the IIEC position to mean that even a utility that foregoes all transition charges would be required to make PPO available, because its customers are paying all that they had been asked to pay. IIEC claims this does not follow from its legal arguments. IIEC states that IP does require customers to pay a transition charge; CILCO does not. CILCO customers are not being asked to pay anything; therefore, they are not "paying all they have been asked to pay." (IIEC reply brief at 24)

IIEC asserts that even if the Commission were to find it cannot legally require IP to offer PPO service to all of its delivery service customers in the first instance, there are valid policy reasons for making approval of the market index approach contingent on IP doing so. (IIEC reply brief at 25; brief on exceptions at 24)

According to IIEC, IP argues that the IIEC companies who intervened in the IP case “are the same large corporations who were large enough and sophisticated enough to have been able to obtain a bargain even before the onset of competition." IIEC says IP reasons that the Commission need not be concerned that these customers will be ". . . unable to benefit now that competition is here." IIEC claims IP’s assumptions are unsupported by the record and the Commission cannot ignore the mandate that a competitive market “. . . must benefit all Illinois citizens." (IIEC reply brief at 26)

IIEC contends that IP’s argument that "no marketer has supported the IIEC’s position on this issue," is unpersuasive. IIEC says the PPO option is granted to customers, not marketers. According to IIEC, marketers would naturally prefer that customers not have such options. (IIEC reply brief at 26)

IP’s suggestion that IIEC’s position "would reward only a small subset of customers," is without merit, according to IIEC. IIEC indicates that the PPO is available to different types of customers, including, but not limited to, small commercial and small industrial customers. IIEC argues that to the extent competition is lacking in the IP service territory, the PPO may be the only option available to these customers and adoption of IIEC’s position, which would expand the availability of the PPO, could benefit all customers otherwise eligible for that option. (IIEC reply brief at 26-27)

IIEC reports that Staff presented certain recommendations concerning notice provisions for termination of PPO service in the event the CTC goes to zero. (Id., citing Staff brief at 59-61) IIEC says it agrees with the Staff that if the PPO is revoked for customers, adequate notice should be given. However, IIEC argues that no customer should be given less than 60 days notice so as to ensure the customer adequate time to secure new supplies through other alternatives. (IIEC reply brief at 27)

Illinois Power argues that the law is straightforward: a customer must be paying a transition charge before a utility can be required to let that customer obtain PPO service. IP asserts that equally straightforward is the notion that when no charge is due from a customer, then the customer is not paying a charge. IP claims that it is difficult to see how any person could read the statute otherwise. (IP brief at 33)

According to IP, the reading posited by the IIEC does not make the statute ambiguous and should be rejected. IP contends that under the IIEC's reading (that a customer is paying all it has been asked to pay), even a utility that foregoes all transition charges (such as CILCO) should be required to make PPO service available because its customers are paying all they have been asked to pay. (Id. at 33-34)

IP asserts that IIEC's interpretation renders the phrase "that is paying transition charges" meaningless. IP contends that if all non-residential customers (including those with zero transition charges) are paying transition charges, then the phrase is surplusage and meaningless. IP argues that a more rational reading is that the General Assembly meant to distinguish those non-residential customers that are paying a transition charge from those who are not. (Id. at 34)

IP asserts that the weakness of IIEC's position is highlighted by its attempt to distinguish a customer who has a zero transition charge from a customer of a utility that has waived transition charges for the present time. According to IP, the problem is that under IIEC's logic, both customers are paying all they have been asked to pay. IP says that to avoid this, IIEC now layers on a requirement (which is not in the statute) that the utility must first "request" payment. IP claim that in addition to the fact that this is not in the statute, even if it were, it would not help the IIEC. IP argues that implicit in the IIEC's logic is that neither customer has been "requested" to pay anything or both customers have in fact been asked to pay nothing. (IP reply brief at 24-25)

IP also argues that as a matter of public policy, IIEC's position, if adopted, would hinder the development of competition in Illinois. IP claims it is telling that no marketer has supported IIEC's position on this issue. According to IP, the reason is obvious: the PPO represents an alternative to the service a marketer can offer and making that alternative more-widely available will not advance the ability of marketers to attract new customers. IP also asserts that the corporate intervenors who comprise IIEC are the same large corporations who were large enough and sophisticated enough to have been able to obtain a bargain even before the onset of competition. IP claims that the Commission need not be concerned that these customers will be unable to benefit now that competition is here. (Id. at 34-35)

IP states that as to those customers whose transition charge falls to zero when the market value is reset, this is already a potential problem under the NFF process (which updates market values every January 1). According to IP, after the transition from NFF to MVI is complete, this ceases to be a problem under IP's 12-month process because the customer uses the same market values for the entire 12-month period. IP asserts that during the transition, this is a relatively small problem because IP uses the old NFF values until a customer's anniversary date occurs (except for those with anniversary dates prior to the implementation of Rider MVI, who will have their market values reset twice in 2002). IP says that to the extent this remains an issue, because this issue is merely a variant of the more general issue of PPO eligibility, the same answer should obtain: the law and sound public policy mean that a utility cannot be required to continue offering PPO service if a customer's transition charge drops to zero. (Id. at 35)

In its reply brief, IP responds to concerns IIEC expressed about customers that initiated PPO service but, were later determined to be ineligible because the transition charge declined from a positive value to zero. IP asserts that IIEC misunderstands IP's proposal when it argues that there could be monthly stepping on and off of PPO eligibility. IP says that under its proposal, once a customer has its market value set, it is set until the customer's next anniversary date. IP claims that the only way for the customer's CTC to change until that date is for another component of the CTC calculation to change. IP contends that these changes are less volatile and less frequent and, in any event, will not lead to multiple times in the same year where a given customer becomes eligible and then ineligible for PPO. (IP reply brief at 25)

IP claims that a utility is not required to ensure that the customer meets the eligibility criteria for the full year; rather, it is required to offer the service for the full year if the customer meets the eligibility criteria. IP says that if a statute, tariff and the accompanying contract all include trigger points at which one party may no longer rely on them, then an otherwise minimum period no longer applies. (IP reply brief at 26, citing Section 16-129)

IP argues that this simple business arrangement also undercuts IIEC's argument that customers would "not expect" that they might lose their PPO eligibility. According to IP, customers who read the statute, IP's tariff and the PPO contract can have no other reasonable expectation. IP also claims that there is no evidence in the record that customers "expect a certain amount of price stability" and IIEC cites to none. IP argues that even if it were true, there is a simple solution and one that does not call for negating the will of the legislature: any customer eligible for delivery service can always contract for a long-term fixed price contract from a RES. According to IP, the customer may pay more for this price certainty but then the customer is no longer bearing any risk for price volatility. (IP reply brief at 26-27)

IP reports that Staff advances the idea, as described below, of a limited notice period before a customer whose CTC falls to zero would lose PPO service. IP indicates it does not object to this proposal but notes that to a large extent, the concept is already embedded (in a different form) in IP's tariffs. IP says that currently, if a PPO customer's CTC falls to zero, it continues receiving PPO service until its next meter read date, at which point it must take some other service. IP says its MVI does not change this. IP claims that because a customer will know its CTC by the 8th business day of the billing month preceding its anniversary date, those on PPO will already know weeks in advance whether they will lose PPO availability. IP asserts that because most of its dates are tied to meter read dates, a strict 30-day notice will be awkward but IP is willing to accept it if imposed, assuming the customer continues to pay its prior positive CTC for this short interim period. (IP reply brief at 27)

Staff contends that there is no legal obstacle to the Commission requiring utilities to provide PPO customers with adequate notice that they will no longer be eligible for PPO service. According to Staff, when a customer's transition charge is computed to be zero or otherwise eliminated, the Commission can require the utility to provide adequate notice and continue providing PPO service to the customer until the end of that notice period or until the customer chooses among the available service options. (Staff brief at 59)

According to Staff, Section 16-110 of the Act provides that in order to be initially entitled to the PPO, a customer must be paying a transition charge. Staff claims, however, that the Act is not clear as to what happens to that customer once the customer no longer pays transition charges because it has been recomputed to be zero. (Id. at 60)

Staff says an electric utility can require a PPO customer to purchase electric power and energy for periods of not less than one year's duration, and may also require that the customer give up to 30 days notice for a purchase of one year's duration, and 90 day's notice for a purchase of more than one year's duration. Staff states that the statute is not clear as to the notice that should be provided by the utility once the customer's transition charge is computed to be zero. Thus, Staff argues, it is consistent with the legislative intent and reasonable to conclude that the customer should be entitled to similar treatment from the utility. Staff asserts that fairness requires that if notice is required to initiate PPO service, then notice should also be required to end PPO service when that customer no longer is paying a transition charge. Staff contends that the utility should provide at least 30 days notice on a one year PPO contract and 90 days notice on a PPO contract greater than one year before cutting the customer off from PPO service when the customer is no longer paying transition charges, assuming that the utility imposes a notice requirement to initiate PPO service. Staff recommends that the Commission order the utilities to provide at least this amount of notice before dislodging customers from PPO service. (Id. at 61)

In Staff's view, IIEC makes a contrived argument that customers are entitled to PPO service for an entire period even when a customer's transition charge becomes zero. (citing IIEC brief at 8) Staff says that IIEC makes this argument despite the fact that Section 16-110(b) clearly provides that " . . . a non-residential delivery services customer that is paying transition charges to the electric utility shall be permitted to purchase electric power and energy from the electric utility . . . . " Staff states that the underlying support for the IIEC's argument is an IIEC witness' testimony that if someone pays zero they are paying all they're asked to pay. Staff believes that IIEC's argument is not reasonable. Staff says that IIEC on the one hand admits that the statute requires a "customer pay something" (citing IIEC brief at 32), but then takes the "incredible" position that zero is something. (Staff reply brief at 15)

According to Staff, IIEC's concern that the General Assembly could not have intended a circumstance where the PPO service could be "offered/withdrawn/offered/withdrawn" (citing IIEC brief at 33) is the result of the General Assembly imposing the requirement that the customer must be paying a transition charge. The possibility that a customer may end up being switched back and forth from the service is addressed in part by Staff's position that notice should be required to end PPO service when that customer no longer is paying a transition charge. Staff claims that the utility should provide at least 30 days notice on a one-year PPO contract and 90 days notice on a PPO contract greater than one year before cutting the customer off from the PPO when he is no longer paying transition charges, assuming that the utility imposes a notice requirement to initiate PPO service. Staff asserts that its position provides the customer with some time to make alternate arrangements and addresses the problems associated with the abrupt end of its service. (Staff reply brief at 15-16)

In its brief on exceptions, **Staff** suggests that the order should avoid attempts to prevent both the utility and customer from ending their PPO contracts when the transition charge falls to zero. Staff asserts that forcing customers to remain on the PPO is not necessarily in the customers' best interest and is likely to be contrary to the customers' interest if the transition charge has dropped to zero. Staff opposes the language in the proposed order that urges IP to refrain from terminating PPO service on other than the customer's anniversary date. (Staff brief on exceptions at 1-3) In its reply brief on exceptions, IP indicates that it concurs with Staff on this point. (IP reply brief on exceptions at 11)

IIEC, in its reply brief on exceptions, disagrees with Staff's recommendation. IIEC argues that contrary to Staff's assertions, a transition charge falling to zero does not make it highly likely that the customer's bundled rate is less than the customer's PPO rate. IIEC claims that for a transition charge to change so much as to cause a once favorable PPO rate to exceed bundled services rate, the swing in market value (or other component) would have to be more than 0.5 cents per kWh on annual average basis. IIEC concludes that the basis for Staff's position is overstated. (IIEC reply brief on exceptions at 10-12)

IIEC suggests that Staff's concern that under the approach adopted by the hearing examiner's proposed order, customers would be harmed if they were to remain on PPO service, could be addressed by allowing IP and the customer to mutually agree to terminate the contract, should the customer be adversely affected by its transition charge becoming zero mid-contract term. According to IIEC, given IP's resistance to date to offering PPO service to customers with a calculated transition charge of zero, it appears highly probable IP would agree to a mutual termination of PPO service. (IIEC reply brief on exceptions at 12)

ComEd indicates that the Illinois electric utilities have differed in their provisions for initiating or terminating PPO service when the transition charge is zero. According to ComEd, IIEC questioned whether utilities are required to provide PPO service when a customer's transition charge is zero. ComEd says that it provides PPO service to customers even if the transition charge is zero, therefore, this issue does not relate to ComEd's proposal. (ComEd brief at 32)

The **AG** did not present testimony, and it did not address this issue in its initial brief; however, it did present comments in its reply brief. The AG says it is IP's position ". . . with respect to those customers whose TC falls to zero when the market value is re-set, we note that this is already a potential problem under the NFF process . . . ." (citing, IP brief at 35) The AG disagrees that re-setting market value under an MVI tariff results in the same potential problem as under the current NFF process. The AG contends that market values under an MVI methodology will, generally speaking, be very different than the values arrived at by the NFF. The AG says it seems reasonable that a customer that is currently subject to a PPO made that choice based on the then current NFF market values and the anticipated NFF market values in January 2001. To unilaterally dissolve a PPO contract based upon market values with a completely different genesis, the AG asserts, ignores assumptions made at contract inception. In its reply brief, the AG proposes a "compromise." (AG reply brief at 8) As noted above, the AG did not address this issue through testimony or in its initial brief. Other parties have had no opportunity to respond to the "compromise" proposed in the AG's reply brief, and this proposal is not supported by record evidence.

V. COMMISSION CONCLUSIONS

A. Introduction and Overview

In these consolidated proceedings, ComEd, IP and Ameren seek authority to implement their respective "market value index" or "MVI" tariffs pursuant to Article IX and Section 16-112 of the Public Utilities Act. These MVI tariffs would govern the methodology used by those companies for computing market values, and the resulting computations would replace the default determinations of market values produced each year by a Neutral Fact Finder ("NFF") under Section 16-112 of the Act. ComEd presently has a MVI tariff in place by virtue of an Interim Order entered by the Commission on April 27, 2000 in Docket No. 00-0259. The design and mechanics of the ComEd, IP and Ameren MVI proposals are described in Section I of the instant order. An analysis of and conclusions on the issues in this proceeding, including those involving the design of the tariffs; respective MVI methodologies; pricing and market-definition related adjustments; and time period and notice-related issues, are contained below.

Under Section 16-112(a), the Commission may approve a market index tariff, but in the absence of such a tariff, the NFF process is the default mechanism to be utilized in the derivation of the market values which are used in the calculation of transition charges.

Under Section 16-112(m), the Commission has the authority to *propose* modifications to a utility's market index methodology, but the utility may, at its option, reject the Commission's modifications and rely instead on the NFF market values for purposes of computing transition charges.

In the instant dockets, some parties, including Staff, Ameren, ComEd, and IP, believe the record indicates that the MVI tariffs proposed by Ameren, ComEd, and IP will likely increase, relative to the NFF, the MVs used in the computation of customer transition charges or "CTCs". Since an increase in MVs causes a decrease in CTCs, these parties contend that the proposed indices can be viewed as a net improvement over the NFF-based default mechanism from the perspective of customers who want to seek out unbundled alternatives to traditional utility service.

In this proceeding, most parties say they favor a properly designed MVI method over the NFF and a number of them, including Staff, NewEnergy and CILCO, have proposed pricing-related adjustments or other modifications to the utilities' MVI proposals. One utility, IP, says it will *not* accept several of the revisions to its MVI tariff proposed by some parties. Some of the parties proposing modifications to the utilities' MVI tariffs, such as NewEnergy, assert that unless flaws in the utilities' MVI proposals are remedied by means of such modifications, the proposals should be rejected, even if that means returning to the NFF.

One Intervenor, IIEC, believes the utilities' MVI proposals contain serious legal and other deficiencies which are beyond correction in these dockets, and should be rejected in favor of the NFF. In the alternative, IIEC recommends various modifications to the MVI proposals.

One question addressed by some parties concerned whether or to what extent *uniformity* in the MVI tariffs should be imposed. In Staff's view, under Section 16-112, the Commission cannot force any utility to accept a uniform market index tariff, and the end result of an effort to create a uniform tariff or "single MVI template" could be that some utilities accept the uniform market index while other utilities reject it, choosing instead to retain the NFF-based market values. In Staff's view, such an end result may produce more variation between utilities than would the adoption of closely-related but otherwise utility-specific market index tariffs.

As noted above, the ComEd, IP and Ameren proposals would compute market values by means of MVI methodologies instead of the NFF process. As was stated in the Interim Order in Docket 00-0259, the Commission is aware of the shortcomings attributed to the use of the NFF process for purposes of determining market values.

Staff and some other parties have suggested, for example, that the NFF process is a cumbersome, expensive procedure which has produced outdated and inaccurate results that have underestimated market prices.

As explained elsewhere in this order, an accurate calculation of market value is of primary significance in the transition to competition, in part because the MV is one of the components in the formula for computing customer transition charges. Underestimating the MV that is used in calculating the CTC will raise transition charges and reduce the extent to which RESs can create savings opportunities for delivery service customers, thereby potentially undermining the development of a competitive retail market for power and energy during the transition period. In addition to affecting the CTC paid by delivery services customers, the MV affects both the CTCs and MVs paid by customers who take service under the Power Purchase Option ("PPO"), as well as eligibility for PPO service, pursuant to Section 16-110 of the Act.

Having reviewed the record in this proceeding, including that presented on reopening, the Commission concludes that the ComEd, IP and Ameren MVI proposals should be approved, subject to the conditions and other modifications found appropriate below. The Commission believes that with such modifications, these proposals can be expected to produce more accurate (and for that matter higher) market values than does the NFF, particularly for volatile peak periods in the summer season, and will better facilitate the development of competition during the transition period. A further analysis of and determinations on the substantive issues in this proceeding, including those involving the respective MVI methodologies; pricing and market-definition-related adjustments; and time period and notice-related issues, are contained below.

Before proceeding with its analysis on these issues, there is one other matter the Commission will address. The Commission observes that a number of parties, such as NewEnergy, IIEC, Nicor and PE Services have recommended that any MVI proposals approved by the Commission in this proceeding be subject to a one year ***"sunset"*** provision or another Interim Order. These parties believe that without a sunset provision or similar procedure, there will be no process available for the Commission to consider, and take appropriate action on, further proposed modifications to the MVI tariffs.

In this regard, as discussed more fully in Section II of this order, several parties continue to express concern over the thinness of trading volumes on the electronic exchanges to be used in the utilities' proposals, particularly in the Into ComEd exchange. This concern, along with the assertion that the electronic exchanges are not sufficiently transparent, allegedly contributes to the possibility that prices on the electronic exchanges could be manipulated.

As for other concerns, there have been suggestions by several parties, as explained in Section III of the order, that the results of the MVI methodologies proposed by the utilities must at some point be adjusted upward to avoid understating market values. Further, as discussed in Section IV of this order, some parties have raised concerns over IP's proposed 12-month rolling average compared to ComEd's and Ameren's Applicable Period A/B approach to computing market values, and to the notice periods or "decision windows" available to PPO and delivery services customers.

In view of these and other concerns, parties favoring a sunset provision have suggested that it will likely be necessary in the future to modify any MVI tariff approved today as more experience is gained under these new MVI programs and as more information becomes available in the developing electricity markets, and that without a sunset provision or similar procedure there will be no process available to the Commission to address such modifications in a meaningful manner.

In the reopened proceeding, NewEnergy suggested that recent unanticipated developments in the energy markets, including the removal of the Into ComEd screen from the Bloomberg trading platform, requires the Commission to limit the effectiveness of the utilities MVI tariffs to a twelve month period, but in no event longer than twenty-four months.

From the utilities' perspective, IP, in its briefs filed prior to the December 22, 2000 hearing examiner's proposed order, stated that while it is committed to discussing refinements to its methodology after it is approved, the lack of definiteness provided by an interim tariff will only cause confusion for customers, RESs and IP, and needlessly lead all to expend further resources in the future. In those briefs, IP said it would not agree to "an interim tariff only". ComEd and Ameren indicate that the Commission has statutory authority under Article IX to investigate an MVI tariff. They assert that under Section 16-112(m) the Commission cannot, either in this or a future proceeding, order the utility to implement modifications to which the utility objects, but that the Commission always retains the authority to find the tariff unjust and unreasonable, propose modifications, or order a return to the NFF. As for other parties, Staff does not support a sunset provision.

The hearing examiner's proposed order recommended adoption of a sunset provision which would require the utilities to file new tariffs on January 1, 2003 and would provide that the tariffs approved in this proceeding will cease to be effective at the conclusion of the customer's May, 2004 billing period. Ameren, ComEd and IP all indicated in their briefs on exceptions that a sunset provision is unnecessary. Ameren and IP recommended that if the Commission believes a sunset provision is necessary, the dates contained in the hearing examiner's proposed order be moved back. ComEd indicated that it is willing to accept the sunset provision contained in the proposed order if approved by the Commission. IIEC, NewEnergy and PE Services all recommended that the dates associated with the sunset provision contained in the hearing examiner's proposed order be advanced.

The hearing examiner's proposed order on reopening recommended adoption of a sunset provision which would require the utilities to file new tariffs on or before October 1, 2002 and would provide that the tariffs approved in this proceeding will cease to be effective no later than the conclusion of the customer's May, 2004 billing period. Neither Ameren nor IP took exception to this provision and ComEd indicated that it would accept that sunset provision. NewEnergy and IIEC recommended advancing the dates associated with the sunset provision contained in the hearing examiner's proposed order on reopening. In its brief on exceptions on reopening, NewEnergy recommended advancing the October 1, 2002 and May, 2004 dates to April 1, 2002 and May, 2003, respectively. IIEC agrees with those suggested dates.

The Commission has reviewed the positions of the parties on this issue. In light of the types of concerns summarized above, the Commission is not prepared at this time to authorize the utilities to permanently put their market value tariffs in place, even as modified by the Commission proposals contained in this order. Also, in light of the removal of the Into ComEd screen from the Bloomberg trading platform and the concerns expressed by some parties regarding the stability of the electronic trading platforms, the hearing examiner's proposed order on reopening found and the Commission agrees that it is appropriate to advance the tariff filing date somewhat from the date contained in the earlier hearing examiner's proposed order. This modification will also be more consistent with the transition period timeline.

Accordingly, given that the mandatory transition period ends January 1, 2005 and that electric utilities may collect transition charges through December 31, 2006 (unless that collection period is extended to no later than December 31, 2008 pursuant to Section 16-108(f) of the Act), the Commission proposes that the market value tariffs of each utility be modified such that they shall cease to be effective no later than the conclusion of the customer's May, 2004 billing period. If a utility accepts this proposed modification, it is directed to file a new market value tariff on or before October 1, 2002. This filing date will provide sufficient time for the parties and Commission to evaluate such proposals. It will also allow time for such other actions as may be utilized in establishing market values, although reestablishing the NFF process, if it has been discontinued, is not a scenario the Commission wishes to encourage.

The hearing examiner's proposed order on reopening also recommended that ComEd, IP and Ameren collect trading volume data for the approved electronic platforms and monitor trading volumes on new or alternative trading platforms and provide such data to Staff on a monthly basis. No party objected to this provision; however, ComEd, IP and Ameren requested clarification on this point. NewEnergy requested that the data collected be provided to all parties to the instant proceeding; however, ComEd objected to NewEnergy's request due in part to the purported proprietary nature of the information.

Having reviewed the parties' concerns of record regarding the trading volumes on the electronic trading platforms, the Commission is of the opinion that such volumes should be monitored. Therefore, as a condition of approving the utilities' MVI tariffs, the Commission proposes that Ameren, ComEd and IP collect trading volume data for the approved electronic trading platforms on a monthly basis and provide that data to Staff on a monthly basis.

The Commission also observes that the utilities have indicated a willingness to monitor various electronic exchanges to possibly enhance their MVI tariffs as the market develops. Accordingly, in addition to monitoring trading volume data for the approved electronic trading platforms as discussed above, the Commission proposes that the utilities also monitor the trading volumes on new or alternative trading platforms and provide such data to Staff on a monthly basis. The Commission also directs the utilities to work with Staff to create an effective process by which Staff can monitor trading volumes on the approved electronic platforms and new or alternative trading platforms.

This sunset provision and related modifications to the utilities' proposed MVI tariffs, along with the other modifications proposed by the Commission herein, will allow the utilities to implement market index tariffs for a relatively lengthy period of time. However, it will also allow the utilities, Staff and other interested parties to gain significant experience with the different aspects of the various tariffs and, perhaps, determine which are superior or problematic. While allowing the tariffs approved herein to be effective for a reasonably lengthy period of time, this sunset provision also provides for a review at a stage in Illinois' restructuring process that will allow the Commission to correct serious problems that are observed and for these corrections to be in place for a meaningful period of time. The Commission believes this provision will also serve as an incentive for utilities and other parties to work together, in workshops and other forums, to develop additional improvements to the MVI programs. In addition, the Commission concurs with those parties who contend that the Commission has the continuing authority to further investigate the utilities' MVI tariffs in the future in order to determine if the tariffs are just and reasonable, to propose further modifications, or to order a return to the NFF process.

B. Methodology for Determining Prices Under Market Index Proposals

As previously discussed in Section II of this order, the ComEd filing proposed to use the Into ComEd exchange for establishing on-peak market values while Ameren and IP propose to use the Into Cinergy exchange for that purpose.

Unicom initially suggested that all three utilities should be required to use the Into ComEd exchange for establishing on-peak market values. This remains Unicom's preference in the long run; however, Unicom says that given the utilities' resistance to Unicom's proposal and the utilities' ability to veto any changes to their tariff proposals, pursuant to Section 16-112(m) of the Act, it may be premature to require statewide adoption of the Into ComEd market at this time. Staff recommends that all three utilities use the Into Cinergy exchange for establishing on-peak market values. While IIEC does not support any of the three utilities' market index proposals, it recommends that all three utilities be required to use the Into Cinergy exchange in the event the Commission decides to proceed with market based pricing.

NewEnergy supports ComEd's proposal to use the Into ComEd exchange for establishing on-peak market values. However, to mitigate its concerns about potential manipulation of the Into ComEd market, NewEnergy recommends that ComEd's data hierarchy be modified to utilize only offers rather than the midpoint of bids and offers when actual transactions are not available. With respect to Ameren and IP, NewEnergy supports their proposed use of the Into Cinergy exchange.

The AG recommends that all three utilities use the Into Cinergy exchange. Alternatively, both Nicor and PE Services recommend that ComEd be allowed to use the Into ComEd exchange for establishing on-peak market values.

With regard to the issue of **manipulation**, NewEnergy, IIEC, Staff, and the AG expressed various concerns over the possibility of manipulation of the electronic trading platforms used in the utilities' proposed methodologies. Generally, there was more concern with manipulation regarding the Into ComEd exchange than the Into Cinergy exchange. ComEd, IP and Ameren, along with PE Services, assert that concerns regarding potential manipulation are not sufficient to warrant rejection of those utilities' proposals.

Ameren, ComEd and IP each use different data sources, but similar procedures, for selecting among the various on-peak price data. These procedures for arriving at each month's on-peak price, from various data sources and when actual trade prices or bids and asks are used, are known as the **data hierarchies**. With regard to these data hierarchies, IIEC contends that bids and offers do not meet the statutory requirements and cannot be used to determine market values. This assertion is challenged by ComEd, IP, Ameren and Staff. As discussed above, NewEnergy recommends that ComEd's proposed data hierarchy, assuming the Into ComEd exchange is utilized, be modified to reflect the use of offers rather than the midpoint of bids and offers when prices for actual transactions are unavailable. ComEd objects to NewEnergy's proposal. Staff recommends that the utilities be encouraged but not required to use offers rather than the midpoint of bids and offers.

Because ComEd's filing proposed to use the Into ComEd exchange, it did not include a **basis adjustment**. Basis adjustments are intended to adjust for price differences attributable solely to location. Ameren proposes to use an additive basis adjustment while IP proposes to use a multiplicative basis adjustment to make a locational adjustment to the Into Cinergy exchange data. Both NewEnergy and the AG recommend the application of a multiplicative basis adjustment to the Into Cinergy exchange data. IIEC recommends that IP be required to update its basis adjustment more frequently than annually, as IP proposes. Staff recommends that the Commission condition approval of the use of the Into Cinergy exchange data with either no basis adjustment or with a multiplicative basis adjustment.

Having reviewed the record, the Commission believes that the concerns expressed by various parties about the possibility of manipulation in the Altrade and Bloomberg electronic exchanges cannot be dismissed out of hand. This is particularly true with regard to the Into ComEd exchange. The thinness of the markets, especially the Into ComEd exchange, concerns the Commission, just as it did previously when various market index proposals were under consideration. The lack of transparency at the electronic exchanges to customers and the Commission only serves to exacerbate this concern.

With regard to the Into Cinergy exchange, the Commission believes, with the modifications proposed by the Commission herein, that the record adequately demonstrates a sufficient number of market participants and transactions such that the possibility of manipulation is remote. Accordingly, the Commission approves the proposals of Ameren and IP to use the Into Cinergy exchange for purposes of developing on-peak market values, subject to the other findings made herein.

On reopening, as discussed above, IP proposed incorporating the Intercontinental Exchange ("ICE") as an additional source of on-peak data. Staff supported IP's proposal while IIEC opposes the use of ICE. The AG recommended that, in addition to IP, Ameren and ComEd should also add ICE as a source of data. ComEd indicated that it is willing to add the ICE trading platform as an additional source for on-peak data.

Having reviewed the record on reopening, it appears to the Commission that the volume of transactions on the ICE may at times be greater than either Altrade or Bloomberg. Therefore, in view of this and other evidence of record regarding trading volumes and related information, the Commission proposes, as a condition of approving the utilities' MVI tariffs in this proceeding, that all utilities using the Into Cinergy exchange shall add the ICE trading platform as an additional source for on-peak data. In the event that ComEd instead utilizes the Into ComEd exchange, as discussed more fully below, the Commission proposes that it also add ICE as a source of on-peak data in connection therewith if, and to the extent, ICE reports activity for the Into ComEd exchange.

In reaching such a conclusion on this issue, the Commission is not persuaded by suggestions that it is premature to add the ICE trading platform as a source of on-peak data. While the data in the record is somewhat limited, there is a strong indication that the ICE trading platform has the potential for very large trading volumes. This fact, along with the other modifications proposed by the Commission, including the requirement that the utilities provide trading volume data to Staff, should mitigate concerns regarding potential manipulation of the market values.

With regard to suggestions that the Commission should develop specific guidelines before adding an additional source of data, the record is not sufficient to do so at this time. The Commission notes that there was no suggestion that specific guidelines were necessary before adopting the Altrade and Bloomberg trading platforms as sources of data. Nevertheless, the Commission believes such guidelines have potential benefits, and the Commission encourages the parties to work together in an effort to develop and propose such guidelines for future consideration.

Finally, the Commission is not persuaded by comments by some utilities that they should be permitted to unilaterally add or eliminate an electronic trading platform or other data source used in its MVI tariff without prior Commission approval. On this point, the Commission notes that ComEd has stated that its tariff already provides that an exchange cannot be added without Commission approval. The Commission hereby finds, unequivocally, that ComEd, Ameren and IP are prohibited from either adding or eliminating a data source used in its MVI tariff without prior Commission approval.

With regard to possible manipulation of the Into ComEd exchange, the record shows that there have been a very limited number of actual transactions in the past and that ComEd has been a party to a large percentage of both actual transactions and bids and offers. Although there is no indication of any manipulation to date, the Commission believes that NewEnergy has proposed a reasonable method to mitigate concerns over potential manipulation of the Into ComEd exchange, which is to use offers rather than the midpoint of bids and offers in the data hierarchy when prices for actual transactions are unavailable. This approach reduces any potential economic incentive on ComEd’s part to manipulate the Into ComEd exchange. Furthermore, the Commission believes this proposal will give ComEd, by far the largest participant in the Into ComEd exchange, an incentive to actively monitor activity on electronic exchange platforms for evidence of manipulation by other market participants. Therefore, if the Into ComEd exchange is used in ComEd's MVI tariff, then as a condition of approving ComEd’s market index tariff, the Commission proposes that ComEd modify its data hierarchy to include only offer prices rather than the midpoint of bids and offers when prices for actual transactions are unavailable.

As observed in the proposed order, however, under Section 16-112(m) of the Act, any of the three utilities with MVI proposals before the Commission may choose to reject Commission proposed modifications to a market index based tariff, choosing instead to utilize the NFF approach to establishing market values. In view of these provisions and other information of record in this case, the proposed order recommended that if ComEd is unwilling to accept the proposed modification to its data hierarchy procedures found appropriate in the preceding paragraph, then, the Commission order should alternatively propose that ComEd modify its tariffs to provide for use of the Into Cinergy exchange for developing on-peak market values instead of the Into ComEd exchange.

In response, ComEd indicated, in its exceptions, that it would be willing to accept use of the Into Cinergy exchange, rather than the Into ComEd exchange, if the Commission agrees that use of data from the Into Cinergy exchange is preferable. In its replies to exceptions, NewEnergy argues that ComEd should not be permitted to do so. For the reasons given above, the Commission finds that ComEd should be permitted to modify its tariffs to provide for use of the Into Cinergy exchange for developing on-peak market values in the event ComEd is unwilling to accept the Commission's proposed modification to the data hierarchy procedures which would apply if the Into ComEd exchange were to be utilized.

With regard to IIEC's arguments that use of the Altrade and Bloomberg electronic exchanges proposed by the utilities is inconsistent with Section 16-112 of the Act, the Commission rejects such arguments. Similarly, the Commission rejects IIEC's suggestion that the use of bids and offers is inconsistent with the statute. As Staff observes, Section 16-112 merely requires that the market values be "a function of" a market index. The Commission finds that the market values established pursuant to this order constitute market values that are "a function of an exchange traded or other market traded index, options or future contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy."

With reference to the various safeguards discussed in this proceeding, the Commission believes that its proposed modifications to ComEd's tariff, if adopted, will largely mitigate the concerns of potential manipulation. Nevertheless, the Commission directs the three utilities to provide Staff with access to all data utilized to calculate market values. This, along with the other modifications adopted herein, should further alleviate concerns over potential manipulation of market values.

With respect to any basis adjustment to be applied to data from the Into Cinergy exchange, several parties assert that the multiplicative basis adjustment described by IP should be adopted, and Ameren indicated its willingness to utilize that approach. Therefore, the Commission approves IP's proposal to use a multiplicative basis adjustment and proposes that Ameren modify its tariff to reflect that type of adjustment. In the event that ComEd chooses to implement a market based tariff utilizing the Into Cinergy exchange, as discussed above, the Commission proposes that ComEd apply a multiplicative basis adjustment.

With regard to off-peak issues addressed in this Section of the order, it appears that an issue which remains contested is IIEC's assertion that the proposals do not measure the overall wholesale market. The Commission believes that IIEC's argument is basically an extension of its previous statutory argument addressed above. Contrary to IIEC's contentions, Section 16-112 of the Act merely requires that the market values be "a function of" a market index "applicable to the market in which the utility sells and the customers in its service area buy, electric power and energy". That is, in the

Commission's view, the statute does not require that the market index measure the entire market.

With respect to NewEnergy's recommendation that an adjustment for load uncertainty or optionality be applied to off-peak market values, this issue is addressed below in subsection C of the conclusions. As for Unicom's assertion that Ameren and IP's calculations of off-peak market values were different, the Commission believes that Ameren and IP have adequately explained why their calculations did not produce identical results.

Finally, as explained in Sections I and II of this order, IIEC also asserts that the market value tariff proposals fail to conform to the requirements of Section 16-112 of the Act because they do not establish market values for each year specified by the NFF process. The record, however, indicates that the NFF has never published market values for more than one year. Furthermore, the Commission believes that the statute does not require that a market value index include all possible years for which the NFF could issue values. Accordingly, the IIEC recommendation on this issue will not be adopted.

C. Pricing and Market Definition Related Issues

1. Introduction

A number of parties have recommended various adjustments or adders to the utilities' MVI proposals in order to more accurately calculate market value within the meaning of Section 16-112 of the Act. As discussed in earlier sections of this order, it has been suggested by some parties that the market value established pursuant to Section 16-112 of the Act must relate to retail customers, not wholesale customers. In this regard, NewEnergy, CILCO and Nicor assert that the statute requires any market index tariff to reflect the retail market value, and that certain upward adjustments to the data used by the utilities are necessary to properly reflect that retail market value. IIEC contends that the utilities' proposals do not reflect the retail market value and, therefore, cannot be approved by the Commission.

As noted above, several parties contend the utilities' proposals improperly rely on wholesale rather than retail market values. Specifically, these parties have recommended upward adjustments to the utilities' proposed market values to reflect: "optionality" for peak prices; optionality for off-peak prices; "energy imbalance" costs; "planning reserve requirements"; "capacity backed" costs; and the power portion of costs associated with acquiring off-peak power. Each of these proposed adjustments is addressed below.

ComEd and IP do not believe it is necessary that the approved tariffs reflect retail market values and they generally oppose various adjustments proposed by the parties. ComEd contends that the market value is neither wholesale or retail, but rather the value obtained in the market for power and energy.

On the issue of the appropriate market, the Commission believes that the General Assembly intended for the market value, which is determined pursuant to Section 16-112 of the Act, to represent the value of power and energy at the retail level. This is consistent with the Commission's interpretation of the statute as a whole and with the Commission's previous findings related to market value. The Commission's view is that when the definition of transition charges in Section 16-102 of the Act is read along with Section 16-110, which relates to the PPO, and Section 16-112 of the Act which explains how market value is to be determined, it is clear that market value is not intended to reflect the wholesale market value. The Commission notes that the same issue arose previously in the utilities' delivery services proceedings. On this point, the Commission previously found, "[I]t is clear to the Commission that the General Assembly contemplates that the market value may include costs associated with retail marketing costs." (Docket Nos. 99-0120/99-0134, Order at 109-110)

By making an upward adjustment to the market value established by the NFF to reflect retail marketing costs, the Commission indicated its belief that the statute contemplates the use of retail market values rather than wholesale market values. No party has explained why the Commission's previous decision was incorrect or how circumstances here are different than they were slightly over one year ago. The Commission hereby affirms its decision that the market values contemplated by the Act are retail market values.

The purpose of the current proceeding, then, is to obtain a reasonable estimate of retail market value as a function of an exchange traded or other market traded index. Based on the record presented, this process by necessity starts with a market index that is representative of the wholesale market, since that appears to offer the best source of data currently available. To the extent methodologies are presented which provide reasonably accurate quantifications of adjustments to account for differences between the wholesale and retail markets (such as the previously approved line loss, retail marketing cost, and Zuraski load shaping adjustments), the Commission believes such adjustments should then be applied in arriving at retail market values. As previously mentioned, several parties in this case have recommended adjustments to the ComEd, IP and Ameren MVI proposals for that purpose. Each such proposed adjustment is addressed separately below.

2. Proposed Adjustments

The first proposed pricing adjustment to be addressed by the Commission in this section of the order is the **"optionality"** adjustment, an issue which has received significant attention in this proceeding and was also one of the issues addressed on reopening. NewEnergy recommends an optionality adjustment to the Altrade and

Bloomberg data, using Black's model, which was proposed by NewEnergy witness Mr. Kagan, or various other methodologies, to develop appropriate market values. On reopening, NewEnergy recommends that an optionality adjustment be made using an options style model. NewEnergy says Ameren's proprietary methodology for quantifying optionality costs should be used to modify Ameren's proposal, and that the Ameren methodology should also be incorporated into the MVI methodologies of ComEd and IP if those companies continue to maintain that they do not have an explicit optionality adjustment of their own.

Generally speaking, the optionality adjustment is intended to reflect the risk associated with serving uncertain loads. A number of parties, such as Staff, believe an optionality adjustment has merit in theory, but should not be approved at this time due to the lack of any acceptable methodologies in the record. In Staff's view, an optionality adjustment should be developed and implemented in the future. ComEd and IP oppose any such adjustment, arguing that their proposals already reflect the risk associated with serving uncertain loads.

In making a determination on this issue, the Commission first observes that the reasons for considering an optionality adjustment were well articulated by NewEnergy and Staff witnesses during the original phase of this proceeding and on reopening. However, in the Commission's view, the record does not support a finding requiring utilities to implement an optionality adjustment at this time. While there is evidence suggesting the utilities' methodologies do not fully reflect the costs associated with serving uncertain load, the Commission agrees with contentions by Staff and several other parties that the record, including that offered on reopening, simply does not contain a viable approach for use in quantifying an optionality adjustment. The Commission also notes that there was testimony from Ameren suggesting that the magnitude of such costs is not significant in relation to market values, although other parties have questioned this assertion.

With regard to using Black's model in an optionality adjustment, this proposal was criticized by a number of parties, including Staff. Among other arguments, these parties assert that assumptions underlying that model are not consistent with electricity pricing behavior; that the theoretical underpinnings of this methodology, in the context of market index tariffs, have not been demonstrated; and that the model as presented does not provide a reasonably accurate quantification of the costs associated with serving uncertain load. As for other suggestions made very late in the process, such as use of a Monte Carlo simulation, adoption of these proposals is not supported in the record.

As discussed above, it was suggested on reopening by NewEnergy that Ameren's proprietary methodology for quantifying optionality costs should be used to modify Ameren's proposal and that the Ameren methodology should be incorporated in the MVI methodologies of ComEd and IP. As Staff explains in its brief on reopening, the record does not support adoption of this recommendation at this time. Before meaningful consideration could be given to this proposal, more information would be needed in terms of how the Ameren methodology works and how market values would be affected by applying the methodology. Furthermore, the difficulties associated with using a proprietary methodology, particularly in the context of a public tariff, would need to be resolved. For that matter, even the NewEnergy consultant who testified on reopening indicated that he could not discuss the design or workings of the optionality-related models he has prepared for other companies because of their proprietary nature.

The Commission also finds it problematic to require the application of Ameren's proprietary methodology to ComEd and IP, who do not have access to it. Such a requirement would have all of the problems identified above, and would further require ComEd and IP to have market values in place with no knowledge of how the optionality adjustment portion was calculated. For these reasons as well as those expressed in Staff's brief on reopening, the Commission concludes that the proposal to apply the Ameren methodology to adjust the MVI tariffs of the three utilities should not be approved at this time.

The Commission does believe, however, that optionality is an important issue which warrants further consideration in the future. The utilities, ARES and other parties are urged to engage in further dialogue on this issue in an effort to develop a workable optionality adjustment methodology which can be used to accurately quantify the costs associated with serving uncertain load, and workshops should be promptly commenced for this purpose.

Finally, as explained above, ComEd offered on reopening to use three years of hourly load and PJM price data in its MVI tariff instead of one year of such data as originally proposed. This modification was opposed on reopening by NewEnergy. Staff does not object to this modification, but is largely indifferent to it. Staff does comment that there is no indication such a modification will "infuse the methodology with an optionality adjustment." The Commission finds that there is insufficient support for this modification in the record, and that it should not be approved at this time.

The Commission will next address NewEnergy's assertion that the utilities have failed to properly account for load uncertainty in their **load shaping/price shaping adjustment for off-peak prices**. NewEnergy eventually recommended that an adjustment to the utilities' off-peak price data be made, using Black's model or various other methodologies. On this point, the Commission notes that the methodologies proposed by NewEnergy for making an adjustment to better account for load uncertainty relative to off-peak load shaping, including use of Black's model, were the same ones proposed for making an optionality adjustment to reflect the risk associated with serving uncertain loads during on-peak periods.

ComEd contends that its load shaping methodology fully accounts for the characteristics of power and energy as applied to retail load via the hourly load shape adjustment that is part of its methodology. IP contends that it would be too difficult and costly, with no significant gain, to modify its off-peak load shaping methodology. Staff indicates that while there may be some validity to NewEnergy's argument, there is no acceptable methodology in the record of this proceeding to make such an adjustment.

While NewEnergy treated optionality and off-peak load shaping as separate issues, the Commission believes there are significant similarities between the issues. In fact, the reasons for rejecting an optionality adjustment articulated immediately above also appear to be applicable to the off-peak load shaping adjustment. For those reasons, the Commission finds that the need for an additional off-peak load shaping adjustment has not been adequately supported, and the record does not contain an acceptable method for implementing such an adjustment even if one were to assume such an adjustment were necessary.

The Commission will next address the proposed adjustments relating to **energy imbalance** charges. Imbalance charges are sometimes described as the charges a supplier incurs when the amount of energy consumed by a customer does not match the amount scheduled for that customer. In this proceeding, CILCO, Unicom, NewEnergy and Nicor support an adjustment to Altrade and Bloomberg data to reflect the costs associated with acquiring energy imbalance service. ComEd, IP and Staff oppose such an adjustment, while Ameren is silent on the issue. Parties opposing such an adjustment argue, among other things, that the appropriate treatment of energy imbalance service when calculating market value, transition charges and PPO charges was fully litigated in individual delivery services proceedings slightly over one year ago.

In this proceeding, CILCO suggested that the Commission reconsider its recent decisions given the change from NFF to market index based market values. However, CILCO provided no methodology by which an energy imbalance adjustment could be quantified and applied. Likewise, Unicom witness Braun explicitly recommended a workshop process to resolve this issue, rather than proposing a methodology which the Commission could adopt in this proceeding. NewEnergy concurred with CILCO's recommendation and suggested that, at a minimum, energy imbalance costs should be included on PPO customers' invoices as part of the transmission and transmission ancillary services line item.

In reaching a conclusion on this issue in the instant docket, the Commission first observes that the evidentiary record contains no specific methodology by which an adjustment to market value for energy imbalance costs could be implemented. As noted above, CILCO provided no methodology by which an energy imbalance adjustment could be established, and the Unicom witness recommended a workshop process to resolve this issue.

With regard to arguments that imbalance costs should be included in PPO customers' invoices, the Commission is aware that the market value will affect both transition charges and other components of PPO bills. However, as indicated by Staff and several other parties, the proper treatment of energy imbalance service when calculating market value, transition charges and PPO charges was recently litigated in individual delivery services proceedings and orders, and in certain of those orders the Commission found that energy imbalance service is a delivery service. While the Commission is not precluded from further considering or reconsidering these issues in the instant proceeding, the Commission notes that the record contains no evidence of a significant change in circumstances since the recent delivery service decisions, or of difficulties resulting from implementing such decisions. Based on information before the Commission at this time, it appears that the possibility of reflecting energy imbalances on customer invoices is better suited to a delivery services proceeding than to the instant market value proceeding.

Accordingly, the Commission finds that the adjustments relating to energy imbalances that were proposed in the instant dockets should not be adopted at this time. Nevertheless, the Commission believes that further workshops on this issue could be beneficial.

Before leaving the imbalance issue, there is one other argument the Commission will address. IP has argued that energy imbalances are already recognized in the price shaping adjustment. The Commission believes this assertion is incorrect in that, contrary to IP's assertions, the price shaping adjustment does not recognize differences between actual and scheduled load.

The next proposed adjustment to be considered is intended to reflect costs associated with **planning reserve** requirements. NewEnergy, CILCO, Staff and Nicor recommend that IP and Ameren increase the market values derived from the electronic exchanges used in the utilities' proposals to reflect the cost associated with obtaining necessary planning reserves to supply firm retail load. These parties assert that Ameren and IP do not allow suppliers to use financially firm agreements without additional reserves to serve retail customers. The proponents of a planning reserve adjustment have not recommended such an adjustment for ComEd because ComEd permits financially firm agreements such as those traded on the Altrade and Bloomberg electronic exchanges to serve as a designated resource. This designated resource is sometimes referred to as marketer firm with liquidated damages, and the parties generally agree that ComEd does not impose planning reserve costs on suppliers in its service territory that use this type of service to meet retail load. Ameren has no objection to making an adjustment for planning reserves; however, IP opposes any such adjustment.

It has been suggested by some parties that Ameren and IP could avoid such an adjustment to market value by accepting marketer firm products without requiring additional planning reserves, as ComEd does. As noted above, ComEd does not require planning reserves; instead it accepts financially firm agreements such as those traded on the electronic exchanges to serve as a designated resource. Alternatively, Ameren, which requires a planning reserve, but does not accept financially firm agreements to serve as designated resources, agrees that an upward adjustment to market values derived from financially firm agreements is appropriate. Ameren proposed that the pricing for this component of the market value be taken from Ameren's OATT Schedule 4A. The Commission finds that this modification to Ameren's proposal is appropriate and should be approved.

On this issue, IP argues that it does not require planning reserves; however, other parties have asserted that IP does, in fact, require planning reserves. IP also argues that the financially firm agreements such as those traded on the Altrade and Bloomberg electronic exchanges include the cost of planning reserves, even though several other parties, including Ameren, suggest this is not the case. The Commission believes that Staff captured the essence of this issue when it stated, "Either a planning reserve requirement is just and reasonable (Ameren's view) or it is not (IP's view), depending on whether the Altrade and Bloomberg Powermatch prices exclude or include, respectively, a component for reserve margin costs." Of course, this assumes that the utility does not accept financially firm agreements as a designated resource.

Inasmuch as IP has suggested that it does not require a planning reserve if a RES uses financially firm agreements to meet retail load (See IP brief at 21), the hearing examiner's proposed order proposed that IP modify its tariffs to explicitly set forth such information. The hearing examiner's proposed order also offered an alternative proposal to IP. Under that alternative, in the event IP declined to modify its tariffs to accept financially firm agreements to meet retail load without requiring planning reserves, then IP would adjust upward its market value calculations by $0.61 per megawatt-hour to reflect costs associated with acquiring planning reserves.

CILCO witness Lancaster testified that CILCO provided a detailed analysis showing the incremental costs of meeting a planning reserve requirement. She stated that based on a typical commercial and industrial customer load profile for the period of one calendar year, the cost of the reserve is $0.61 per megawatt-hour. (CILCO Ex. 2.0 at 5) In its brief on exceptions, CILCO claims that Ms. Lancaster's testimony was merely an example of how a percent adder would be applied.

IP indicated in its brief on exceptions that while it believes a reserve adjustment is unwarranted, IP is willing to accept the $0.61 per megawatt-hour adjustment contained in the hearing examiner's proposed order. In its reply brief on exceptions, IP claims that CILCO presented no methodology for arriving at the value for which 15% is taken and that the proposal in CILCO's brief on exceptions should be rejected because it is ill-defined and unworkable.

Having reviewed the arguments of the parties, the Commission believes that CILCO witness Lancaster did recommend a planning reserve adjustment of $0.61 per megawatt-hour. In any event, the Commission finds that the $0.61 per megawatt-hour flat adjustment is easily applied and produces a reasonable result. Therefore, the Commission proposes that IP modify its tariffs to set forth explicitly that it does not require a planning reserve if a RES uses financially firm agreements to meet retail load. In the event IP declines to modify its tariffs to accept financially firm agreements to meet retail load without requiring planning reserves, then the Commission proposes that IP adjust upward its market value calculations to reflect costs associated with acquiring planning reserves. In that event, the Commission proposes that IP increase the market value of power and energy by $0.61 per megawatt-hour.

The next adjustment to be addressed relates to a purported requirement by IP and Ameren to utilize **capacity backed** resources. CILCO and NewEnergy recommend the application of a capacity backed adjustment to the Altrade and Bloomberg data to reflect not only the cost of energy but, also the cost of acquiring capacity to serve firm retail load. The proposed adjustment would apply to IP and Ameren. This adjustment is opposed by ComEd, IP and Staff. Ameren is silent on the need for such an adjustment.

In support of its proposed adjustment, CILCO contends that IP and Ameren require RESs to utilize capacity backed resources, as opposed to financially firm agreements or marketer firm with liquidated damages to serve retail load. CILCO states that ComEd already accepts financially firm agreements and thus, no capacity backed adjustment is necessary for ComEd.

As noted above, ComEd, IP and Staff take exception with CILCO on this issue. ComEd claims that CILCO mischaracterizes the Altrade and Bloomberg products used to develop the market value indices as “energy only”. IP asserts that the financial value of marketer firm energy is equal to or greater than the financial value of native load power and energy. Staff contends that this is an aspect of transmission service provided under the utilities’ FERC-approved OATTs and is beyond the purview of the Commission.

The Commission observes that there seems to be some lack of common understanding among the parties regarding the nature of this issue. In fact, it appears that in many instances the parties discussed this issue along with the planning reserve issue, or referred to arguments relating to planning reserves when discussing the capacity backed adjustment.

It appears CILCO has assumed that because prices on the electronic exchanges do not explicitly state a separate capacity charge, it is an energy only value. However, the record does not support this conclusion. In addition, the Commission notes that the NFF reported market values without a separately stated capacity charge. The record indicates that, with regard to financially firm contracts and the capacity backed issue, all three utilities use the data from the electronic exchanges in the same manner. The Commission believes that Ameren, IP and ComEd should be treated the same and that a capacity backed adjustment is not supported by the record.

Another adjustment proposed in this docket relates to the cost of acquiring capacity to meet off-peak retail load requirements, also known as the **"off-peak pricing"** or **"dump sales"** issue. Hereafter, the record developed prior to reopening on this issue is referred to as the "original record", the record on reopening is referred to as the "reopened record" and the combined record is sometimes referred to as the "entire record." NewEnergy recommends, and Nicor supports, adjusting the historical off-peak prices in the utilities' market index calculations to reflect the true cost of acquiring power and energy to serve retail customers, instead of the utilities' incremental cost of generating energy during off-peak periods. NewEnergy and others sometimes refer to energy sold at incremental cost as "dump energy". Ameren, ComEd and IP, along with Staff, oppose any such adjustment.

NewEnergy claims that the off-peak forward prices used by ComEd, IP and Ameren include only the energy cost component and fail to adequately reflect the power or capacity cost associated with acquiring power and energy. NewEnergy argues that the approach used by these three utilities reflects the incremental cost of generation but does not adequately reflect the value of power associated with multi-day or longer-term transactions.

ComEd asserts that NewEnergy's argument rests on the flawed assumption that spot prices are generally lower than forward prices. IP concurs with ComEd's argument and further contends that capacity values are primarily embedded within the high demand, highly volatile periods more typical of on-peak periods. Staff asserts that, in establishing market values, the need to avoid "dump energy" sales during off-peak periods has not been established. ComEd, IP and Staff agree that, even if there were a need to adjust off-peak prices for capacity costs, the record does not contain an adequate proposal to do so.

Having reviewed the positions of the parties on this issue, the Commission first concludes that the original record does not support NewEnergy's proposed adjustment to off-peak prices. There is no showing in the original record that off-peak prices include a capacity cost component or, even if they do, that the data which ComEd, IP and Ameren propose to use do not already include such a capacity cost component. Finally, even if one were to assume that such an adjustment were required, there is no adequate approach for quantifying such an adjustment in the original record. NewEnergy suggested gathering broker quotes and estimating the volume-weighted difference between two sets of quotes to determine the implied market value of off-peak power and energy. As several parties observed, the original record does not demonstrate how this proposal would work, how it would be implemented, or who would be responsible for implementation.

As discussed above, the record was reopened after the proposed order was issued to take additional evidence relating to a possible off-peak adjustment. On reopening, Ameren, IP and ComEd provided proprietary data to Staff and the AG relating to actual off-peak transactions entered into by the utilities. Both Staff and the

AG concluded that the evidence on reopening is inconclusive and that an adjustment to off-peak prices is not appropriate at this time. NewEnergy, in its brief on reopening, recommends the utilities undertake a modification of the off-peak data hierarchy. NewEnergy also recommended that Staff develop a system for collecting data from broker market quotes to be used by the utilities.

The Commission concurs with the AG's and Staff's assessment that the evidence on reopening is inconclusive. While there is some possibility that the off-peak methodologies employed by the utilities may understate off-peak market values, the data was insufficient to verify or quantify such a difference.

Based on a review of the entire record in this proceeding, the Commission concludes that there is neither an adequate basis for an off-peak adjustment or an acceptable methodology to implement an off-peak adjustment. However, as discussed above, the evidence presented on reopening suggests that further investigation into developing an off-peak adjustment may be warranted. The Commission accepts the AG's offer to continue working with Staff to review prices of actual off-peak transactions conducted by the utilities. ComEd, IP and Ameren are directed to continue to cooperate with Staff and the AG in this review. Furthermore, the Commission finds that the utilities, NewEnergy and Staff, along with other interested parties, should participate in workshops to more fully develop a proposal for the use of broker quotes or other approaches as potentially workable methodologies to further consider, and implement as appropriate, an off-peak adjustment.

With regard to the suggestion contained in NewEnergy's brief on reopening to modify the off-peak data hierarchy, the Commission does not believe that this proposal should be approved at this time. The purpose of the reopened proceeding was to investigate further developing an upward adjustment to off-peak market values, not to develop a new off-peak data hierarchy. Furthermore, no party had any opportunity to respond to the proposal contained in NewEnergy's brief on reopening. Moreover, it is not entirely clear, from NewEnergy's brief on reopening, how this new off-peak data hierarchy would work.

Finally, the Commission notes that there was an adjustment proposed by IP to calculate **non-firm prices**. IP proposes to calculate non-firm prices by dividing firm prices by 1.15. Both IP and Staff indicate that this proposal is not contested and should be approved. (<u>See</u> IP brief at 22; Staff brief at 45) The Commission hereby approves IP's approach for calculating non-firm prices.

D. Time Period, Notice-Related and Transitional Issues

1. Period A/B versus 12-month Rolling Average

As previously noted, ComEd and Ameren propose to recalculate market values and transition charges twice per year in conjunction with Applicable Period A and

Applicable Period B information filings. IP proposes a rolling 12-month average approach in which it would compute market values and transition charges every month.

Nicor initially objected to the Period A/B method of calculating market values. Nicor expressed concern that Period B contains 12 months of data without utilizing a summer period and recommended that the Period A/B method include a full 12 months of data. However, in its reply brief, Nicor acknowledged that it would be too burdensome at this time for utilities to change their Period A/B method of calculating market values.

Staff recommends that the Commission approve the Period A/B approach for ComEd and Ameren as well as the 12-month rolling average approach for IP.

CILCO and the AG believe the Period A/B method is superior to the 12-month rolling average approach. CILCO expressed concern over the amount of time customers would have to make decisions under the terms of IP's 12-month rolling average approach, as originally filed.

Unicom, like CILCO, expressed concern over the amount of time for customers to choose delivery services. Unicom asserts that under IP's proposal, as originally filed, some customers will have a decision window of as little as eight days after market values and transition charges are published to decide whether to select delivery services. Unicom proposed that IP expand the decision window by moving the index sampling intervals back one month.

IIEC expressed concern over the amount of time available for PPO customers to make decisions under IP's 12-month rolling average method. IIEC's complaint was that under IP's proposal, a customer may have to sign up for PPO service prior to knowing the transition charge that will be imposed, or even if the customer is eligible for PPO service.

In response to IIEC's concern, IP proposed to modify its PPO requirement, whereby the notice provision will be the lesser of either 30 days or the length of time between the 10th business day of a month and the scheduled meter read date for the next calendar month. IIEC responded that IP's modification was inadequate. IIEC says customers, particularly those switching to delivery service for the first time, need sufficient time to evaluate power and energy proposals. IIEC suggested that IP secure the market data each month, but only actually change the tariffed market value energy charges if there is an overall change in the values exceeding some specified threshold level.

Having reviewed the positions of the parties, the Commission first concludes that the Period A/B approach proposed by ComEd and Ameren for use in their respective MVI tariffs is reasonable and should be approved. The Commission also finds that IP's proposal to use a 12-month rolling average in its MVI tariffs is reasonable and should be approved, subject to the modifications found appropriate below.

With respect to the decision window to be made available under IP's tariff, the hearing examiner's proposed order recommended adoption of the proposal of Unicom and required IP to expand the decision window by moving the index sampling intervals back one month. As discussed above, IP developed an alternative proposal that involved updating market values on a bimonthly basis. IIEC indicates that it would find the bimonthly approach acceptable if IP maintained its prior agreement related to the modified PPO decision window. Unicom, on the other hand, argues that the parties have had no opportunity to evaluate IP's new proposal and that it is difficult to see, based on the record, whether one methodology is more accurate than the other. As discussed above, IP indicates that IIEC's proposed modification to its bimonthly approach is acceptable except that it would not be applicable to a customer returning from a RES to PPO service. IIEC agreed that this exception is appropriate, and it supports IP's bimonthly updating approach as an acceptable compromise.

In reaching a conclusion regarding the decision window, the Commission first observes that under IP's proposal, most customers will have more than eight days to make a decision whether to select delivery services. On the other hand, any given customer may have as little as eight days to make such a decision. IP's defense of its proposal appears to be that eight days is enough time for every customer to make the decision whether to select delivery services, and that publishing market values and transition charges earlier exposes IP to additional risk.

The Commission believes that while eight days may be sufficient time for some customers to make such a decision, all non-residential delivery services customers are eligible for delivery services and the Commission has the responsibility to ensure that all eligible customers may reasonably take advantage of this opportunity. Furthermore, under the existing NFF process, all utilities effectively publish market values and transition charges for a one-year period when the annual NFF report is issued. In addition, under the Applicable Period A/B methodology, market values and transition charges are, in some circumstances, published months before they may be used by customers. IP's complaints of incurring additional risk are unconvincing in the face of the narrow decision window its proposal would impose on customers.

As a condition of approving IP's 12-month rolling average methodology, the Commission proposes, pursuant to Section 16-112(m) of the Act, that IP expand the decision window by updating values on a bimonthly basis, so that market values would be updated six times each year and applicable to those customers whose anniversary dates or beginning dates fall in the next two succeeding bill-cycle months. It appears that the decision window is of greater concern for those customers who are deciding whether to enroll for delivery services for the first time than it is for those who are renewing delivery services. IP's proposed bimonthly updates will provide such customers at least thirty days, and in many instances more than thirty days, to make such a decision, which is a significant improvement over its original proposal.

Furthermore, the Commission accepts IP's proposal to modify its PPO notification requirement. Under IP's modified notice requirement, the notice provision will be the lesser of either 30 days or the length of time between the 10th business day of a month and the scheduled meter read date for the next calendar month. This PPO notification requirement would be applicable to all PPO customers except those returning from a RES back to PPO service. The Commission agrees with IP and IIEC that the existing notice requirements are appropriate for such customers. The Commission believes that these modifications will provide PPO customers and all other delivery services customers with a sufficient opportunity to review published market values and transition charges without causing an undue burden on IP.

2. Transitional Issues

There are several transitional issues in this proceeding, some of which appear to have been resolved, in whole or in part. First, as discussed above in Section B of the Conclusions, the Commission is proposing a modification in this order whereby ComEd will modify its tariffs to reflect the use of offers rather than the midpoint of bids and offers in its data hierarchy. Staff recommended that if ComEd does not agree to the Commission's proposal to modify its data hierarchy to use offers rather than the midpoint of bids and offers, but instead agrees to use the Into Cinergy hub as specified in the Commission's alternative proposal, then the change in ComEd's tariff should take effect with ComEd's next Applicable Period A informational filing in early April 2001. Given the timing of this order, the Commission directs each of the three utilities to inform the Commission, within seven days after entry of this order, as to whether it intends to file its MVI tariff, and to file any such MVI tariff within that same seven-day period.

Second, IP's modified approach to transition customers from NFF values to MVI values also appears to have resolved all outstanding concerns in this regard and is hereby approved. Under this proposal, IP will transition customers from the NFF values to MVI values as customer anniversary dates roll around in 2001. For those customers whose anniversary dates occur prior to implementation of Rider MVI in 2001, IP will recalculate the customers' transition charges on January 1, 2002 using the MVI values and then again on their anniversary date in 2002.

There are certain transitional issues relating to customer eligibility for PPO service that remain unresolved. It is IP's position that under the statute, a utility is not required to offer PPO service to any customer who is not currently paying transition charges. In contrast, IIEC contends that under the statute, a delivery services customer is entitled to initiate PPO service, renew PPO service, or remain on PPO service even if that customer's computed transition charge is zero or declines to zero. Staff disagrees with IIEC's interpretation of the statute. However, Staff asserts that the statute does allow the Commission to require utilities to provide PPO customers with adequate notice that they will no longer be eligible for PPO service.

The Commission understands the importance of obtaining PPO service to IIEC. However, the Commission believes that the statute clearly requires utilities to offer PPO service to customers "paying transition charges to the electric utility" and does not require utilities to offer PPO service to customers not paying transition charges to the electric utility. IIEC's efforts to introduce concepts such as whether a utility is "requesting" payment of transition charges or whether a customer is "paying all they have been asked to pay" go beyond the clear and unambiguous words of Section 16-110(b) of the Act. Accordingly, the Commission rejects IIEC's argument that a customer from whom no charge is due is in fact paying a charge within the meaning of the statute.

With regard to notice to customers, IP has agreed to provide customers at least 30 days notice on a one year PPO contract and 90 days notice on a PPO contract greater than one year before terminating PPO service when the customer is no longer paying transition charges, as recommended by Staff. The Commission therefore imposes this requirement as a condition of approving IP's tariffs.

It should be noted that the termination clause in question has been in IP's PPO tariff since October 1, 1999. (See IP Ex. 3.3 at 2) However, the Commission also observes that ComEd has elected to provide PPO service to delivery services customers even if the computed transition charge is zero. IP and IIEC appear to agree that, under IP's 12 month rolling average method, the likelihood that a customer will have its transition charge decline to zero at any time other than the anniversary date is small. While the Commission does not have statutory authority to require IP to continue providing PPO service to a customer that has its computed transition charge decline to zero, the Commission urges IP to refrain from terminating PPO service on other than the customer's anniversary date since this action could have a negative consequence on customers and on the development of competition in IP's service territory.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the record herein, is of the opinion and finds that:

(1) ComEd, IP, CIPS and UE are Illinois corporations engaged in the business of furnishing electric service in the State of Illinois, and each is a public utility as defined in Section 3-105 of the Act and an electric utility as defined in Section 16-102 of the Act;

(2) the Commission has jurisdiction over ComEd, IP, CIPS and UE and the subject matter of this docket;

(3) the facts recited, findings made and conclusions reached in the prefatory portions of this Order above are supported by the record and are hereby adopted as findings in this order;

(4) ComEd, IP, CIPS and UE are each authorized to file tariffs which contain the Commission's proposed modifications to their respective tariffs as are described and found appropriate in the "Commission Conclusions" section of this Order above, with such tariffs to be effective not earlier than five days after the date of filing; with these modifications, the proposed tariffs are just and reasonable; any such proposal which does not contain these modifications is rejected.

IT IS THEREFORE ORDERED by the Commission that ComEd, IP, CIPS and UE are each hereby authorized to file tariffs consistent with the determinations and findings made in this Order, provided that such tariffs reflect the proposed modifications found appropriate in this Order, with such tariffs to be effective not earlier than five days after the date of filing; any such proposal which does not contain these modifications, including ComEd's MVI tariff approved in the Interim Order, is hereby rejected.

IT IS FURTHER ORDERED that within seven days after entry of this order, each of the utilities shall inform the Commission as to whether that utility intends to file its MVI, and shall file any such MVI tariff within that same seven-day period.

IT IS FURTHER ORDERED that the proposed tariffs filed by IP, which were suspended and thereafter resuspended, are hereby cancelled.

IT IS FURTHER ORDERED that any and all requests or objections not heretofore specifically ruled upon are hereby deemed disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.800, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 11th day of April, 2001.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)